

Express Mail No.: EV 593389054 US

PATENT
Attorney Docket No. 10759-153

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Nykoluk, et al.

:

Serial No.: 09/604,995

:

Art Unit: 3727

:

Filed: June 28, 2000

:

Examiner: Tri M. Mai

:

For: TOWABLE WHEELED
BACKPACK

:

:

DECLARATION OF INVENTOR UNDER 37 CFR 1.132

Mail Stop: AF
Commissioner for Patents
P.O. Box 1450
Washington, D.C. 20231

I, Cory O. Nykoluk declare and state as follows:

1. I have reviewed and understand the specification, drawings and claims (both original and presently pending) of U.S. Application 09/604,995 (hereafter "the '995 application").
2. I am the original, first and sole inventor of the invention(s) recited in the claims of the '995 application (hereafter "Claimed Invention").
3. I have reviewed and understand the subject matter described and claimed in U.S. Patent 6,279,706 to Chen Shou Mao, titled "Pull rod of Luggage Capable Carried on One's Back" issuing August 28, 2001 from application serial number 09/593,301 filed on June 13, 2000 (hereafter "the '706 patent").
4. To the extent that the '706 patent includes subject matter that relates to the Claimed Invention of the '995 application, Chen Shou Mao, the individual named as the inventor on the '706 patent, did not invent, and did not provide any inventive contribution to, such subject matter.
5. To the extent that the '706 patent includes subject matter that relates to the Claimed Invention of the '995 application, Chen Shou Mao derived and copied such subject matter from me.
6. The '706 patent does not constitute prior art against the Claimed Invention in the '995 application because the subject matter of the '706 patent, that relates to the Claimed Invention of the '995 application, describes my work, not the work of another person.

FACTS AND DOCUMENTARY EVIDENCE

7. Factual evidence proving that the '706 patent describes my work, not the work of another person, can be found in the attached documents (Appendices A-G), as well as in the "Notice in Accordance with MPEP 2001,06(c) of Related Litigation" filed on or about October 31, 2002 in the '995 application and the "Declaration of Prior Invention in the United States to Overcome Cited Patent" filed on or about December 1, 2003 in the '995 application.
8. On information and belief, a Notice in Accordance with MPEP 2001.06(c) of Related Litigation was filed on October 31, 2002 in the parent '995 application with the U.S. Patent Office, along with a copy of a Complaint from a lawsuit filed on September 19, 2002 in the United States District Court for the Eastern District of Missouri between TRG Accessories, LLC and Chen Shou Mao (hereafter the "Complaint").
9. On information and belief, a Declaration of Prior Invention in the United States to Overcome Cited Patent (37 CFR 1.131) was filed on December 1, 2003 in the '995 application with the U.S. Patent Office (hereafter the "Declaration of Prior Invention").
10. I have reviewed the Declaration of Prior Invention and the Complaint and I continue to agree with the facts stated therein.
11. The Complaint (a copy of which is attached at Appendix D) sets forth the following facts which I agree with and believe to be true:
 - A. TRG Accessories (hereafter "TRG") is the assignee of the '995 application and was my employer at the time that I invented the subject matter of the '995 patent.
 - B. On information and belief, Chen Shou Mao was the president of Yung Ting Metal Co., Ltd (hereafter "YT"), which was organized and existed under the laws of Taiwan.
 - C. On information and belief, YT had manufactured, at TRG's direction, hardware used in TRG products, including trolley and handle systems, wheel systems, tubing, screws, etc.
 - D. On information and belief, the usual course of dealings between YT and TRG had been for TRG to transmit design drawings for each new product to YT, from which YT provided a proposal in accordance with which YT would manufacture the new product.
 - E. I developed the Claimed Invention of the '995 application from mid-1999 through early 2000, while employed by TRG in connection with a project named E-Motion 360° Collection Trek Pack (hereafter "E-Motion project").

F. On information and belief, on or about November of 1999, the first prototype from the E-Motion project was manufactured by Modeltech, Inc.

G. On information and belief, sometime after December of 1999, TRG contacted Chen Shou Mao and proposed that YT manufacture a second prototype in connection with the E-Motion project, at which time TRG transmitted to YT design drawings of the prototype for the E-Motion project.

H. On information and belief, sometime between the delivery of the second prototype by YT to TRG and June 2000, TRG contacted YT and proposed that YT manufacture a commercial product in accordance with the E-Motion project. The proposal was e-mailed to YT and, consistent with the parties prior course of dealings, included the design drawings of the product associated with the E-Motion project.

I. On June 13, 2000, unknown to TRG, YT filed U.S. patent application 09/593,301 (now the '706 patent), which claims the invention that was embodied in the product associated with the E-Motion project.

J. On June 28, 2000, TRG filed the parent '995 application and on March 21, 2002, TRG filed the '995 application, both of which claim invention(s) associated with the E-Motion project.

K. Chen Shou Mao did not make any inventive contribution to the inventions embodied in and arising from E-Motion project that are now claimed in the '995 application.

12. Appendix A attached hereto includes a series of screen shots of a directory of selected files stored on a CD storing several files prepared in connection with the E-Motion project. Appendix A also includes print-outs of the selected files from the E-Motion project CD.

A. In Appendix A, the screen shot on page 2, shows a CD titled "e-motion.sketchb" which represents a collection of documents prepared in connection with conception and development of the E-Motion project.

B. The CD includes a sub-folder labeled "transformation_" that has a sub-sub-folder labeled "round.2".

C. The sub-sub-folder "round.2" includes certain files, for which the screen shot shows file name, size, type and date last modified.

D. The files titled "Untitled-1.tif", "Untitled-2.tif", "Untitled-3.tif", "Untitled-4.tif", and "Untitled-5.tif" were last modified on or before December 21, 1999.

E. In the screen shot on page 2 of Appendix A, the TIF file titled "Untitled-2.tif" is highlighted and the content of the TIF file appears on page 3 of Appendix A.

F. In the screen shot on page 4 of Appendix A, the TIF file titled "Untitled-3.tif" is highlighted and the content of the TIF file appears on page 5 of Appendix A.

G. In the screen shot on page 6 of Appendix A, the TIF file titled "Untitled-4.tif" is highlighted and the content of the TIF file appears on page 7 of Appendix A.

H. In the screen shot on page 7 of Appendix A, the TIF file titled "Untitled-5.tif" is highlighted and the content of the TIF file appears on page 8 of Appendix A.

I. The sketches on pages 3, 5, 7 and 9 of Appendix A were prepared on or before December 21, 1999, and illustrate my concept for the backpack on wheels with a handle attached to a telescoping arm (retracted within the backpack).

13. Appendix B attached hereto represents a sketch prepared in connection with the E-Motion project on or before March 7, 2000, which illustrates an exploded representative of my concepts for a backpack on wheels having a rigid base for the backpack, as well as wheels to be mounted to the base, a single-pole curved telescoping arm to be mounted to the base, and a lower end of the telescoping member pivotally attaches to the base through a ball and socket joint.

A. Throughout the early part of 2000, TRG and YT exchanged several documents, including email, sketches, design drawings and other documents, related to my concepts for the E-Motion project. The sketch at Appendix B was one such document that TRG and YT exchanged on or about March 7, 2000.

B. Prior to preparation of the sketch in Appendix B, I conceived of the concepts shown in Appendix B including, among other things, a backpack with i) wheels mounted to a base of the backpack, ii) a single-pole curved telescoping arm mounted to the base, and iii) a lower end of the telescoping member pivotally attaches to the base.

C. The upper left corner of the sketch at Appendix B includes the notations "ATTN: Jevons", "From Cory", "Date: 7 Mar 00" indicating that I sent the sketch on or about March 7, 2000 to an individual named Jevons who at that time worked at YT under Chen Shou Mao's direction. I provided detailed directions, on an on-going basis, to Chen Shou Mao and others at YT regarding how to implement the Claimed Invention of the '995 application.

14. Appendix C attached hereto sets forth a sketch made on or about May 18, 2000.

A. The sketch at Appendix C illustrates the backpack on wheels concept for a 22 inch bag when properly fitted on a person. The sketch at Appendix C illustrates the telescoping member in the retracted position.

B. In the sketch at Appendix C, the indicia "18 May 2000 CN" represent my initials (CN) and the date on which the sketch was prepared.

15. Appendix E attached hereto sets forth screen shots of a directory of selected files stored on the CD (referenced above in connection with Appendix A) storing several files prepared in connection with the E-Motion project. Appendix E also include print-outs of selected files from the E-Motion project CD.

A. In Appendix E, the screen shot on page 2, shows the CD titled “e-motion.sketchb” that includes a sub-folder labeled “back.contruction” representing the construction of the portion of the backpack that contacts the back of the person wearing the backpack.

B. The sub-folder “back.construction” includes a sub-folder titled “study.2” that contains several files, some of which have an EPS file type, and were last modified on or before May 23, 2000.

C. Pages 3, 5, 7, 9 and 11 of Appendix E illustrate the content of the EPS files titled “back.exploded.eps”, “back.straps.eps”, “back.together.eps”, “strap.a.eps”, and “strap.b.eps”, respectively.

D. Page 3 of Appendix E represents an exploded sketch of the components forming the backing layer of the E-Motion project backpack.

E. Page 5 of Appendix E represents a sketch of a shoulder strap configuration for the E-Motion project backpack.

F. Page 7 of Appendix E represents a sketch of the backing layers joined together with the E-Motion project backpack having wheels.

G. Page 9 of Appendix E represents a sketch of a shoulder strap configuration for the E-Motion project backpack.

H. Page 11 of Appendix E represents a sketch of another shoulder strap configuration for the E-Motion project backpack.

16. Appendix F attached hereto sets forth screen shots of another directory of selected files stored on the CD (referenced above in connection with Appendix A) prepared in connection with the E-Motion project. Appendix F also includes print-outs of selected files from the E-Motion project CD.

A. In Appendix F, the screen shot on page 2, shows the CD titled “e-motion.sketchb” that includes a sub-folder labeled “photos.pix” representing photographs of a completed prototype backpack prepared in connection with the E-Motion project.

B. The folder “photo.pix” includes three files titled “TRG_#13_Webmeesenger1.jpg”, “TRG_#13_Webmeesenger2.jpg”, and

“TRG_#13_Webmessenger3.jpg”, all of which have a JPEG Image file type and were last modified on or before June 26, 2000.

C. Pages 3, 5, and 7 of Appendix F illustrate black and white printouts of the photos stored in the JPEG files titled “TRG_#13_Webmeesenger1.jpg”, “TRG_#13_Webmeesenger2.jpg”, and “TRG_#13_Webmessenger3.jpg”, respectively.

D. As shown at each of pages 3, 5 and 7 of Appendix F, the prototype backpack for the E-Motion project was completed and reduced to practice by June 26, 2000, including wheels and a single-pole curved arm with a T-shaped handle on the end thereof.

17. I conceived the Claimed Invention of the ‘995 application at least as early as the beginning of 2000.

18. I reduced to practice the Claimed Invention of the ‘995 application by building an actual working prototype before June 13, 2000.

19. Following conception, I was diligent in reducing to practice the Claimed Invention of the ‘995 application.

20. As further evidence of conception, diligence and reduction to practice before June 13, 2000, attached is appendix G that illustrates a project timeline and the design work in process for the E-Motion project also referred to as the backpack on wheels (abbreviated BPOW).

A. As set forth in Appendix G, the second prototype was scheduled to be started and finished in April of 2000, while the third prototype was scheduled to be started and finished in May of 2000.

B. On information and belief, the first prototype was completed before June 13, 2000 and before starting the second prototype.

C. On information and belief, the second and third prototypes were finished before June 13, 2000.

21. As shown by the attachments, above statements, Complaint, and Declaration of Prior Invention, to the extent that subject matter described in the ‘706 patent relates to the Claimed Invention of the ‘995 application, such subject matter is my work, not the work of Chen Shou Mao.

22. As shown by the attachments, above statements, Complaint, and Declaration of Prior Invention, to the extent that subject matter described in the ‘706 patent relates to the Claimed Invention of the ‘995 application, Chen Shou Mao copied and derived such subject matter from my work that was provided to YT by TRG.

DECLARATION

23. As the person signing below:

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application and any patent issued thereon.

SIGNATURE

SOLE INVENTOR

Full Name: Cory O. Nykoluk

Signature: Cory O. Nykoluk Date: 23 DEC 2004

Residence: 115 CROFTON CIR. CT., BALLWIN, MO 63021 USA

Citizenship: US

Post Office Address: 115 CROFTON CIR. CT., BALLWIN MO 63021 U.S.A.

The following are attached and made a part hereof:

Attachment A: December 21, 1999 backpack sketches.

Attachment B March 7, 2000 sketch of handle assembly.

Attachment C: May 18, 2000 sketch of backpack assembly.

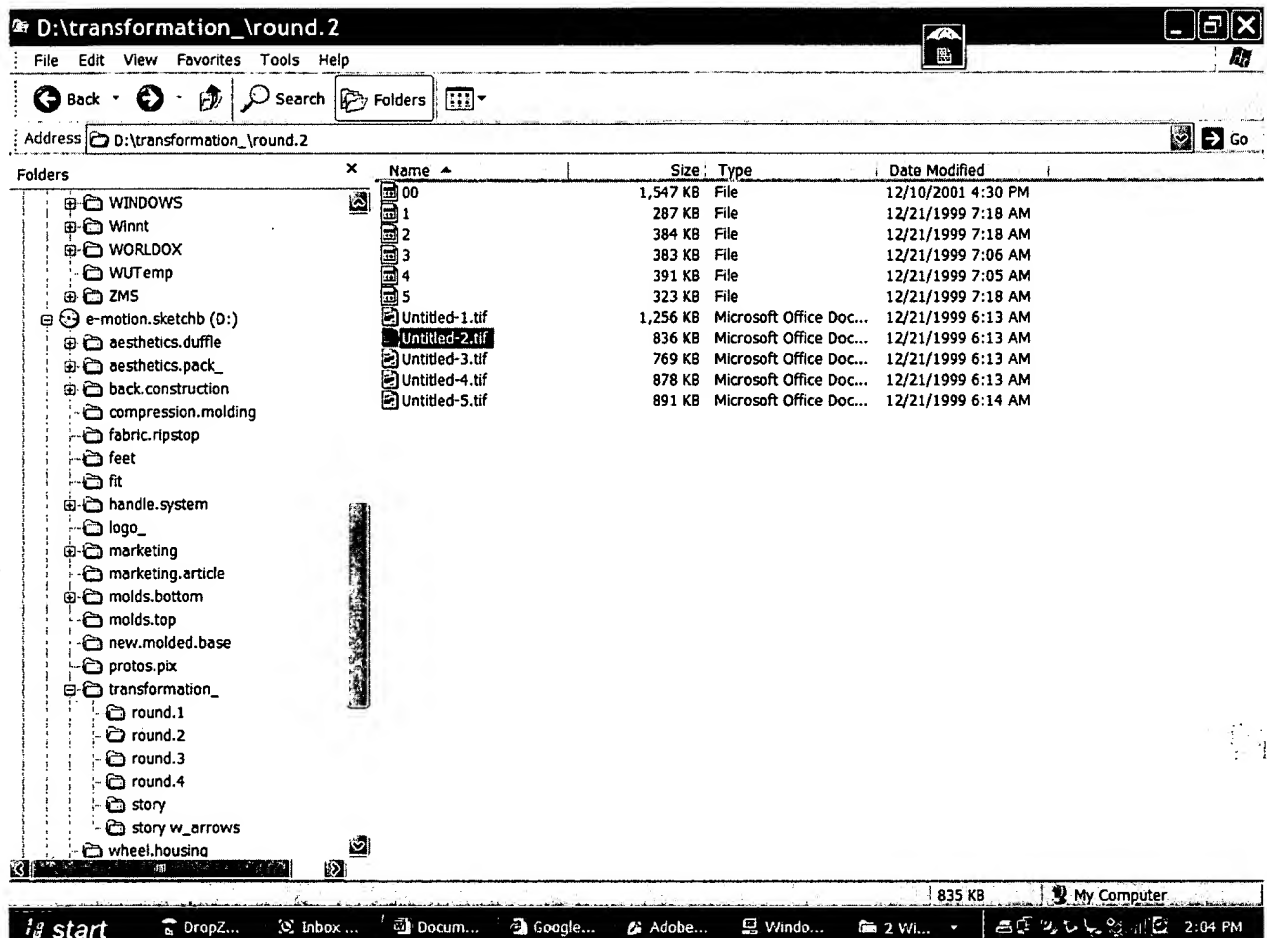
Attachment D: Complaint from a lawsuit filed on September 19, 2002 in the United States District Court for the Eastern District of Missouri between TRG Accessories, LLC and Chen Shou Mao.

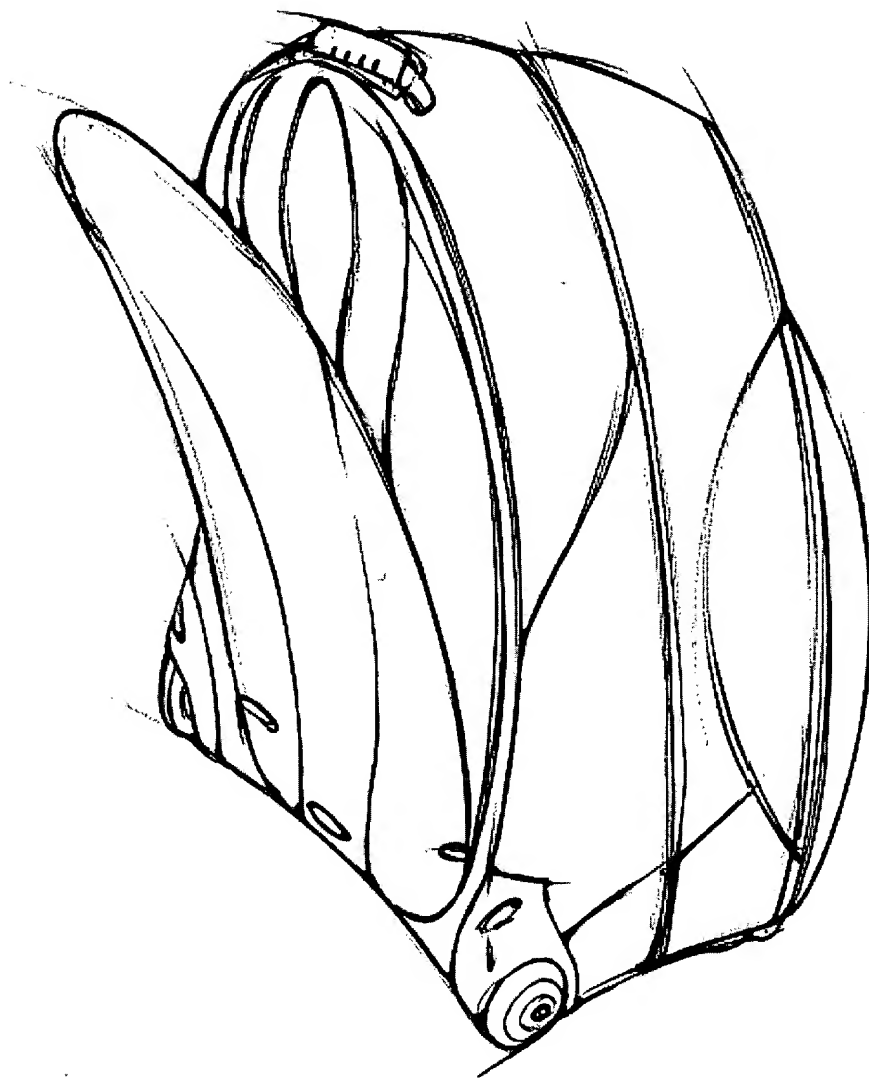
Attachment E: Sketches of back construction (study 2).

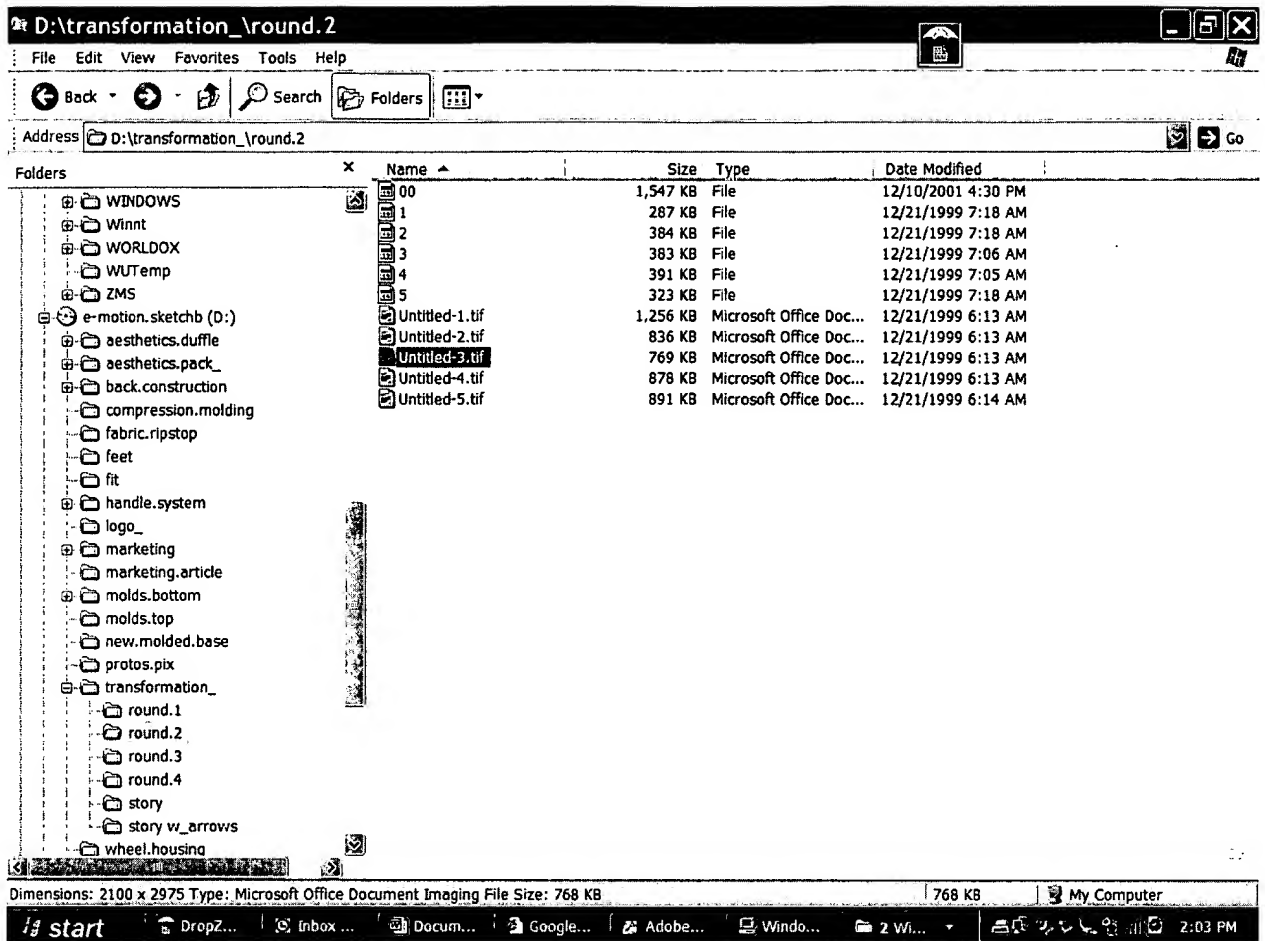
Attachment F: June 26, 2000 Photos of prototype backpack.

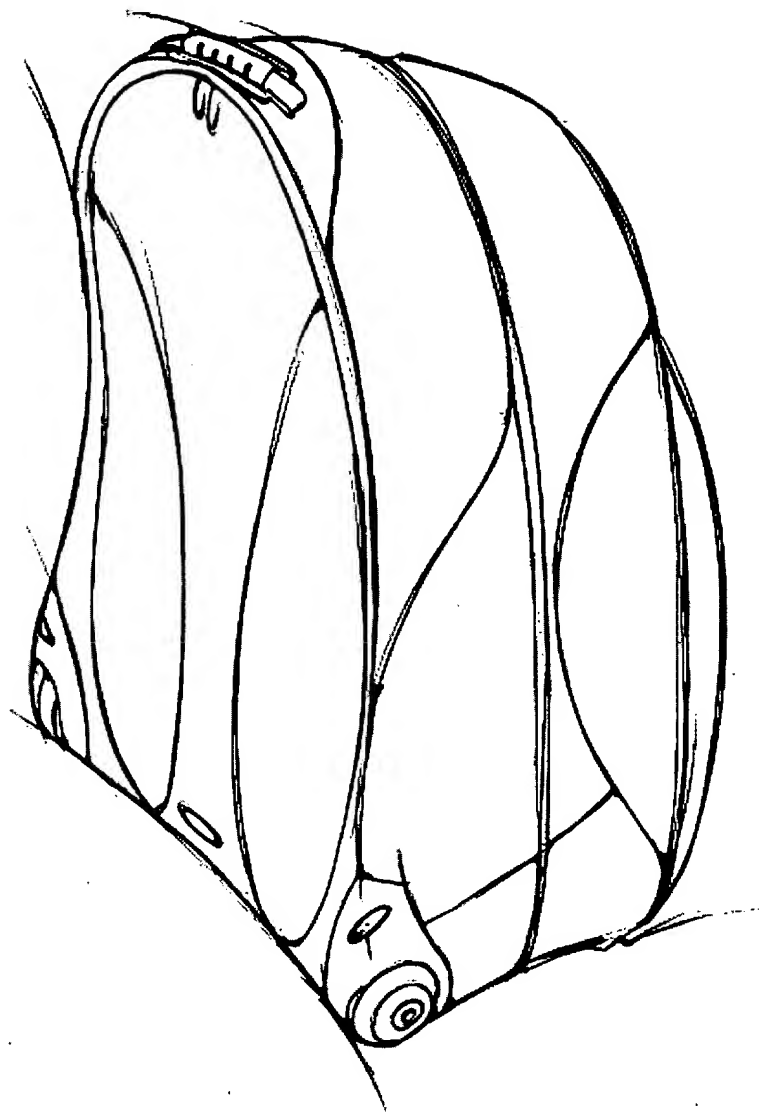
Attachment G: April to August 2000 Project timeline for backpack on wheels project.

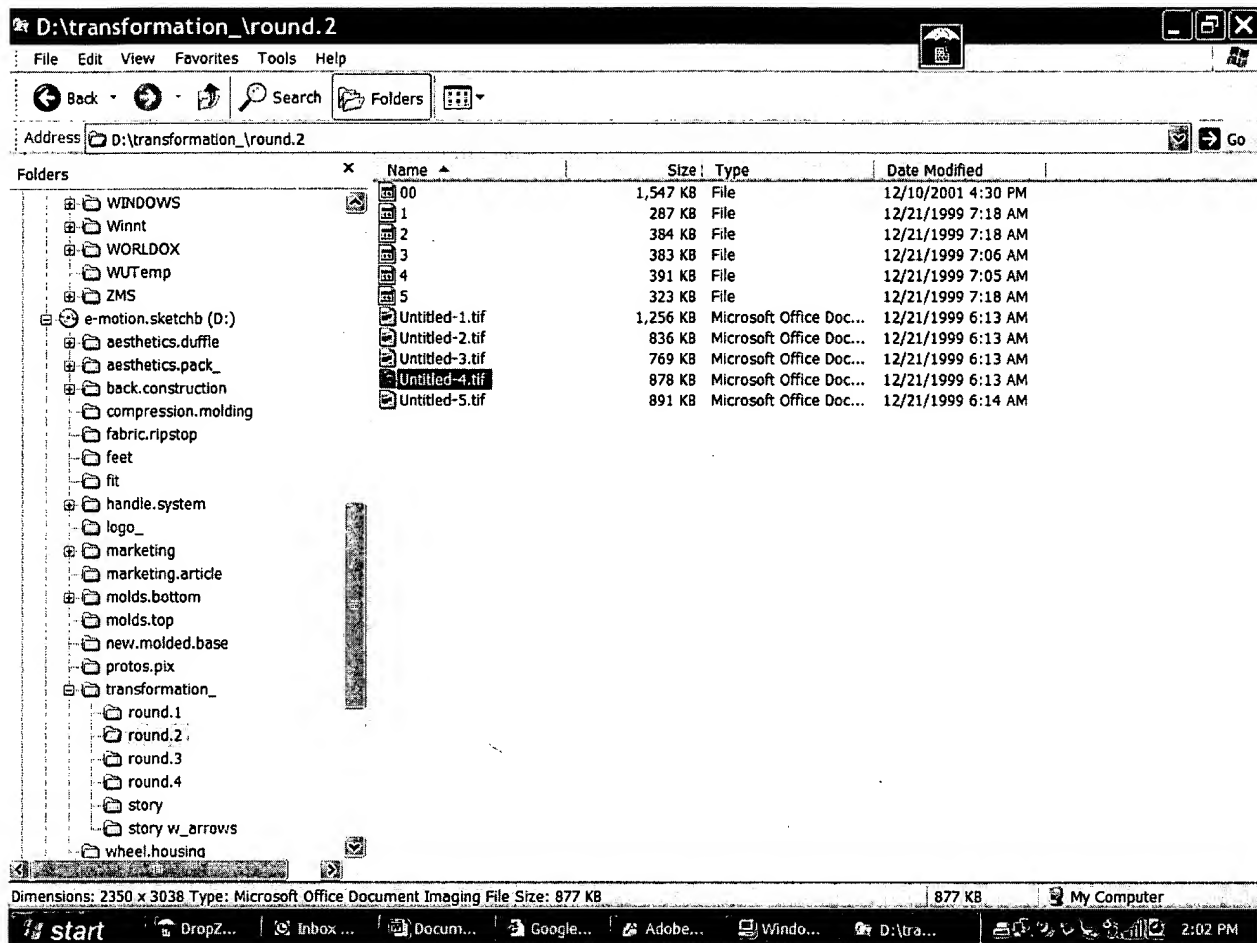
APPENDIX A



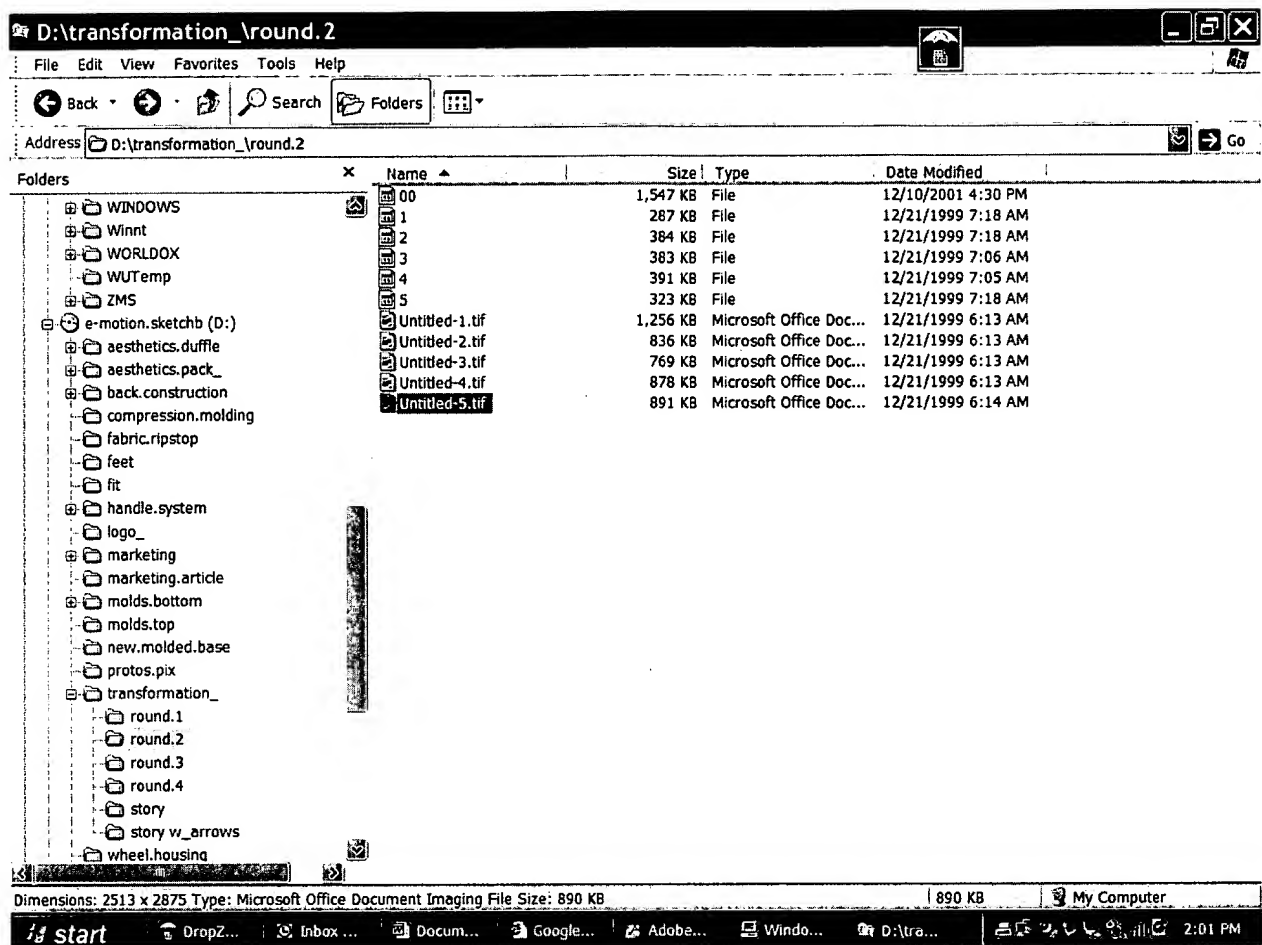


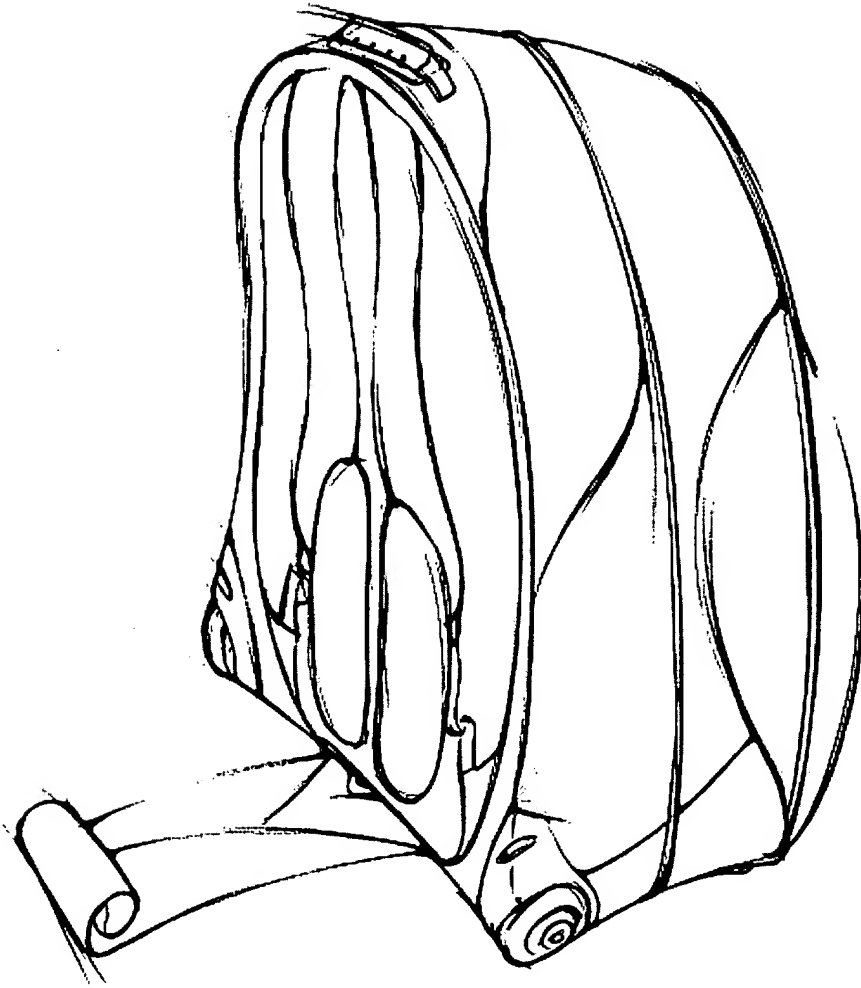










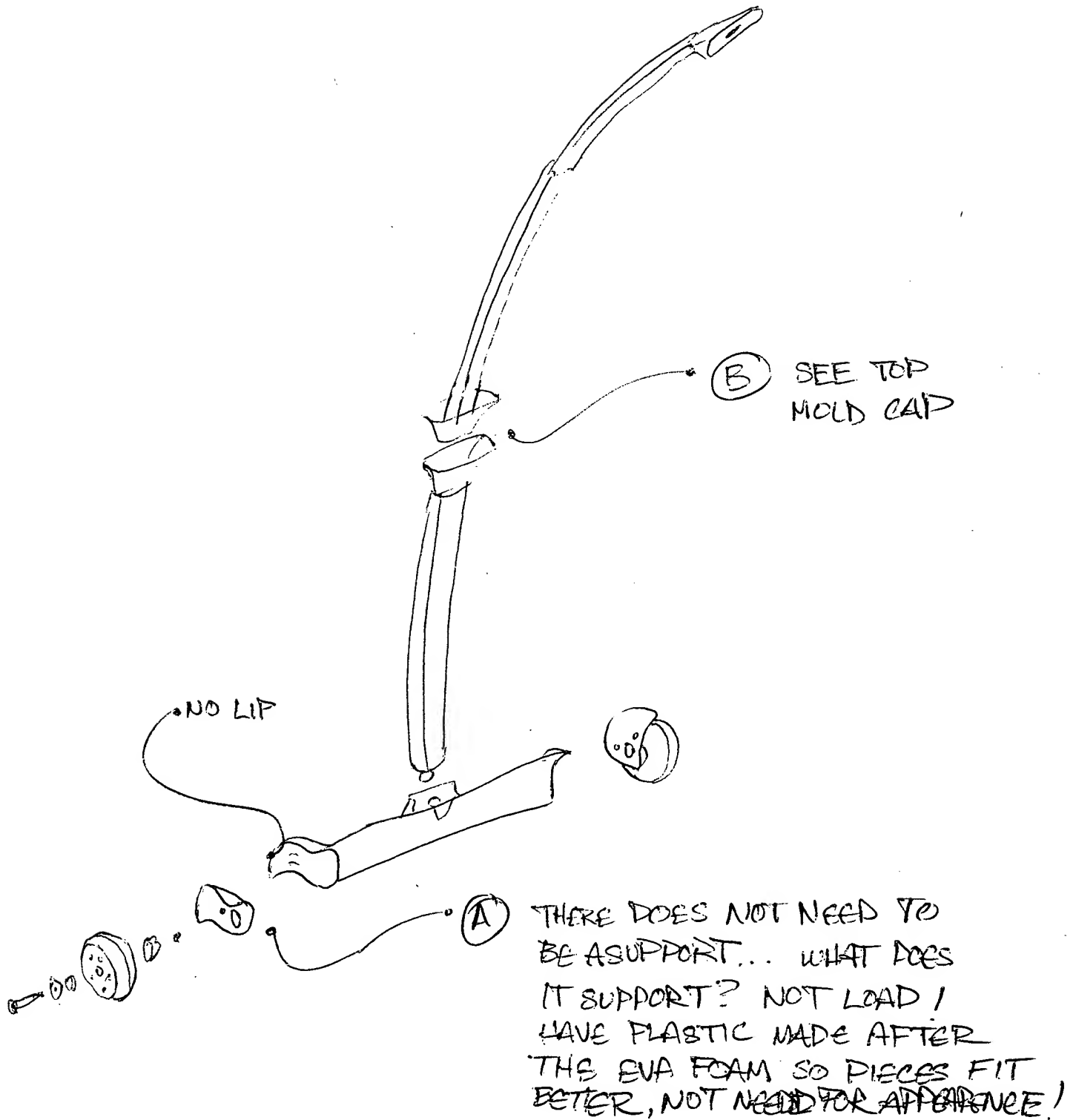


APPENDIX B

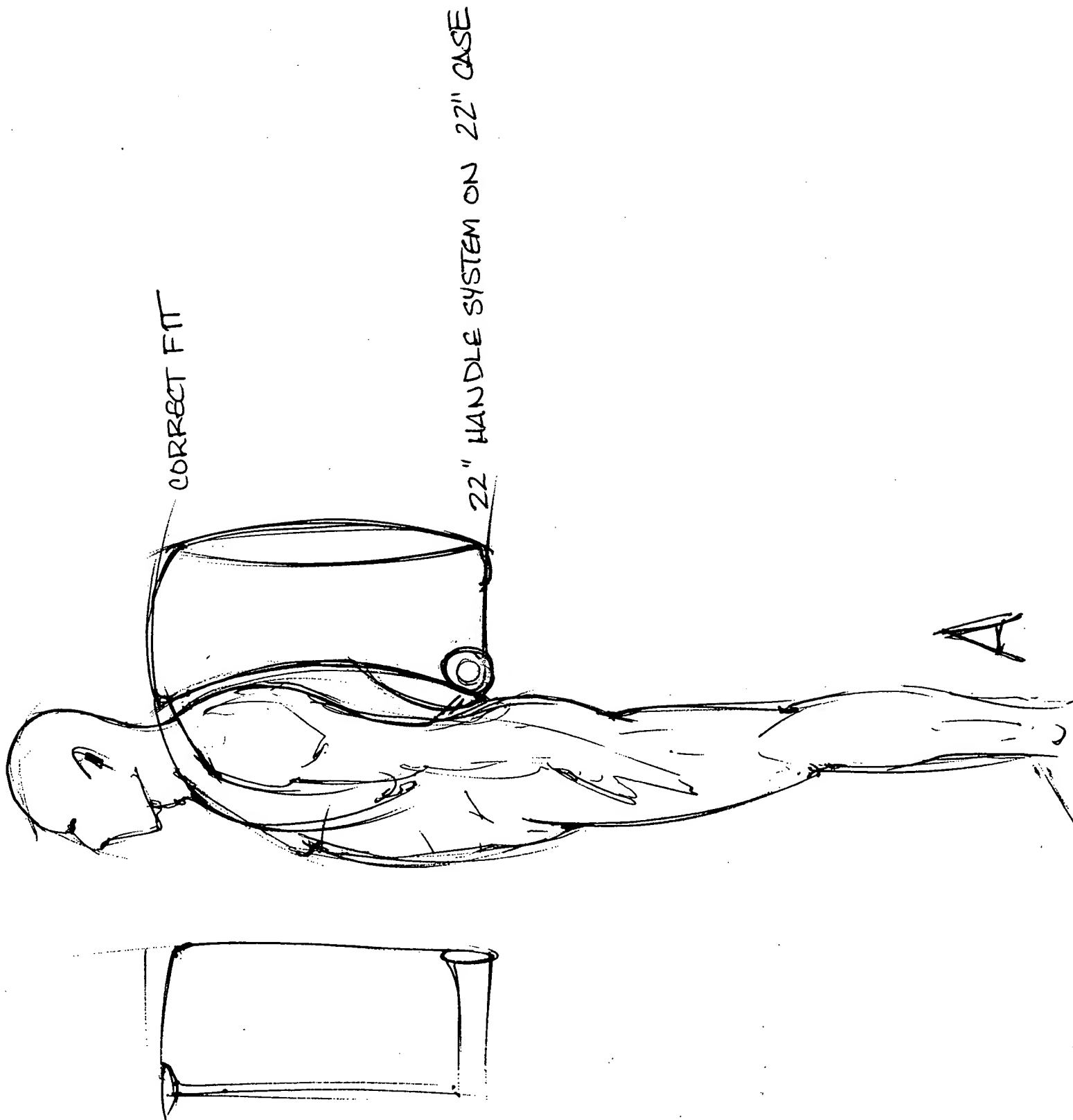
ATTN: JEVONS

FROM: CORY—

DATE: 7-MAR-00



APPENDIX C



18 MAY 2000 CN -

APPENDIX D

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:	:	
Nykoluk, Cory O.	:	
Appln. No. 10/103,033	:	Art Unit: 3727
Filed: 21 March 2002	:	Examiner: Tri M Mai
For: TOWABLE WHEELED BACKPACK	:	Docket No.: 26/1143US(1)
	:	
	:	

Via Facsimile
Assistant Commissioner for Patents
Washington, D.C. 20231

Notice In Accordance with MPEP 2001.06(c) of Related Litigation

Sir:

Applicant wishes to bring to the attention of the Patent Office that the subject matter of the above referenced application could be considered to currently be involved in litigation (styled TRG Accessories, LLC v. Chen Shou Mao, Civil Action No. 4:02CV-01424-CAS in the United States District Court for the Eastern District of Missouri, Eastern Division).

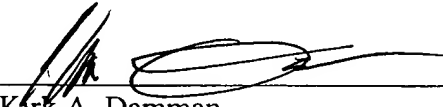
The Complaint in the referenced litigation which is attached hereto, among other things, seeks correction of the inventorship of United States Patent 6,279,706 ('706 patent) to both eliminate the original inventor, Chen Shou Mao, and add the inventor, Cory Nykoluk, who is the inventor of the above referenced application. A petition has previously been filed seeking interference between the '706 patent and the above referenced application.

Applicant believes no fees are due in conjunction with this filing, however, the Commissioner is authorized to charge any deficiencies necessary for this filing, including any claims fees and/or extension fees to/from our **Deposit Account No. 50-0975**.

If any questions remain, Applicant respectfully requests a telephone call to the below-signed attorney at (314) 444-7600.

Respectfully submitted,
Lewis, Rice & Fingersh, L.C.

Dated: October 31, 2002



Kirk A. Damman
Registration No. 42,461
Attorney for Applicants

Customer Number: 22822
Lewis, Rice and Fingersh, L.C.
Attn: Box IP Dept.
500 N. Broadway, Suite 2000
St. Louis, MO 63102-2147
Tel: (314) 444-7600
Fax: (314) 444-7788

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI

FILED

SEP 19 2002

TRG ACCESSORIES, LLC,

Plaintiff,

v.

CHEN SHOU MAO,

Serve:

John S. Egbert
Harrison & Egbert
412 Main Street, 7th Floor
Houston, TX 77002

Defendant.

U. S. DISTRICT COURT
EASTERN DISTRICT OF MO

Civil Action No.

JURY TRIAL DEMANDED

4:020707 1240 AS

COMPLAINT

COMES NOW Plaintiff, TRG Accessories, Inc. ("TRG"), by and through its attorneys,
and for its Complaint against the above-named Defendant, states as follows:

PARTIES

1. Plaintiff TRG Accessories, Inc. is a corporation organized and existing under the laws of the State of Missouri, with its principal place of business located at St. Louis, Missouri.
2. Defendant Mao is the president of Yung Ting Metal Co., Ltd. ("YT"), which, upon information and belief, is organized and existing under the laws of Taiwan, with offices in Taiwan.
3. Upon information and belief, Defendant Mao is a citizen or subject of a foreign state.

JURISDICTION AND VENUE

4. This Court has jurisdiction over the subject matter of these claims pursuant to 28 U.S.C. § 1331, 1338 and 1367, as related claims arising under the federal law and the common law of Missouri. An alternative basis for jurisdiction for Plaintiff's Missouri common law claims is 28 U.S.C. § 1332(a)(2), because the matter in controversy exceeds \$75,000 and is between a citizen of the state of Missouri and foreign subjects.
5. Venue is proper under 28 U.S.C. § 1391(d).

FACTS COMMON TO ALL COUNTS

6. Plaintiff TRG is in the business of developing and marketing luggage and travel accessories. Plaintiff is an innovator in this field.
7. Defendant, president of YT, is in the business of manufacturing luggage and travel accessories.
8. Since February 1999, YT has manufactured, at Plaintiff's direction, almost all of the hardware used in Plaintiff's products, including trolley and handle systems, retractable wheel systems, tubing, screws, etc.
9. The usual course of dealing between Plaintiff and Defendant has been for Plaintiff to transmit design drawings to Defendant in connection with Plaintiff's proposal that YT manufacture one of the Plaintiff's products. The design drawings are provided to Defendant only to enable him to accept or reject Plaintiff's proposal and, if accepted, to manufacture the product. Aside from the design drawings of the E-Motion 360° Collection Trek Pack invention, Defendant has, to Plaintiff's knowledge, always respected the propriety of Plaintiff's design drawings.

10. From mid-1999 through early 2000, Cory Nykoluk, while employed by Plaintiff, developed the E-Motion 360° Collection Trek Pack, an innovative piece of luggage which can be comfortably carried on a person's back or in tow.
11. In or about November 1999, the first prototype of the E-Motion 360° Collection Trek Pack invention was manufactured by Modeltech, Inc.
12. Sometime around December 1999, Plaintiff contacted the Defendant and proposed that YT manufacture a second prototype of the E-Motion 360° Collection Trek Pack invention. Plaintiff transmitted the design drawings of the prototype to Defendant. Defendant manufactured the prototype and delivered it to Plaintiff.
13. Sometime between the delivery of the prototype by Defendant and June 2000, Plaintiff contacted the Defendant and proposed that Defendant manufacture a commercial version of the E-Motion 360° Collection Trek Pack invention. The proposal was e-mailed to Defendant and, consistent with the parties' prior course of dealings, included the design drawings of the E-Motion 360° Collection Trek Pack. The design drawings were included for the purposes of allowing Defendant to determine whether to accept the proposal and, if accepted, to enable the product's manufacture. Defendant accepted the proposal and manufactured the E-Motion 360° Collection Trek Pack for Plaintiff.
14. On June 13, 2000, unbeknownst to Plaintiff, Defendant filed U.S. Patent Application No. 09/593,301, which claims Plaintiff's E-Motion 360° Collection Trek Pack invention.

15. On June 28, 2000, Plaintiff filed U.S Patent Application No. 09/604,995, which claims the E-Motion 360° Collection Trek Pack invention. Mr. Nykoluk has assigned his rights in the E-Motion 360° Collection Trek Pack invention to Plaintiff. Such assignment was duly recorded in the United States Patent & Trademark Office at Reel 10931, Frame 305.
16. The sole basis for Defendant's patent application was the design drawings e-mailed to him by Plaintiff.
17. Defendant did not contribute anything to the development of the E-Motion 360° Collection Trek Pack invention.
18. Cory Nykoluk is the true and only inventor of the E-Motion 360° Collection Trek Pack.
19. On August 28, 2001, the PTO issued Patent No. 6,279,706 to Defendant (hereafter "the '706 patent"). A copy of the '706 patent is attached hereto as Ex. A.
20. Defendant also obtained patents in Taiwan (No. 180967) and China (No. ZL00209989.6) which claim Plaintiff's E-Motion 360° Collection Trek Pack invention.
21. Upon information and belief, Defendant has sold embodiments of Plaintiff's E-Motion 360° Collection Trek Pack invention to at least two Canadian companies, which have offered the same for sale in the United States.

COUNT I
**(Correction of Inventorship of U. S. Patent 6,279,706
to eliminate Chen Shou Mao as inventor)**

22. Plaintiff restates, realleges and incorporates by reference paragraphs 1-21 as if fully set forth herein.
23. 35 U.S.C. § 256 provides that a court may order a patent corrected “[w]henever through error a person is named in an issued patent as the inventor”.
24. Defendant Chen Shou Mao is currently named as the inventor of the ‘706 patent.
25. Defendant did not contribute in any way to the development of the E-Motion 360° Collection Trek Pack, the invention claimed in the ‘706 patent.
26. It was error for Defendant to be named as the inventor of the ‘706 patent.

COUNT II
**(Correction of Inventorship of U. S. Patent 6,279,706
to add Cory Nykoluk as inventor)**

27. Plaintiff restates, realleges and incorporates by reference paragraphs 1-26 as if fully set forth herein.
28. 35 U.S.C. § 256 provides that a court may order a patent corrected “[w]henever...through error an inventor is not named in an issued patent and such error arose without any deceptive intention”.
29. Cory Nykoluk is not currently a named inventor of the ‘706 patent.
30. Cory Nykoluk is the true and only inventor of the ‘706 patent.
31. It was error for Cory Nykoluk not to be named as the inventor of the ‘706 patent.

This error was not the result of any deceptive intent on Plaintiff’s part.

COUNT III

(Breach of Confidence and Misappropriation of Trade Secret)

32. Plaintiff restates, realleges and incorporates by reference paragraphs 1-31 as if fully set forth herein.
33. Cory Nykoluk is solely responsible for the innovative design of the E-Motion 360° Collection Trek Pack.
34. The design of the E-Motion 360° Collection Trek Pack represents information that can be used in the operation of a business that is sufficiently valuable and secret to afford Plaintiff an economic advantage over others. As such, the E-Motion 360° Collection Trek Pack information and design drawings constituted a trade secret.
35. Sometime prior to June 2000, Plaintiff proposed that Defendant manufacture for Plaintiff the E-Motion 360° Collection Trek Pack. The proposal included Plaintiff's design drawings of the E-Motion 360° Collection Trek Pack.
36. Plaintiff included the design drawings of the E-Motion 360° Collection Trek Pack for the purposes of enabling Defendant to respond to the proposal and, if agreement was reached, to manufacture the E-Motion 360° Collection Trek Pack for the Plaintiff. The parties agreed and understood that the design drawings were not to be used by the Defendant for any other purposes.
37. The parties agreed and understood that the design drawings were disclosed on a strictly confidential basis.
38. As a result of the parties' agreement and understanding of the confidentiality of the design drawings, Defendant owed Plaintiff a duty of confidence with respect to Plaintiff's E-Motion 360° Collection Trek Pack trade secret.

39. As a result of the prior course of dealing between the parties, during which Defendant had maintained the confidentiality of Plaintiff's design drawings with respect to Plaintiff's other products, Plaintiff was reasonable in inferring that Defendant would hold in confidence Plaintiff's E-Motion 360° Collection Trek Pack trade secret and not use it for any other purpose. As a result, Defendant owed Plaintiff a duty of confidence with respect to the E-Motion 360° Collection Trek Pack trade secret.
40. Under the circumstances of Plaintiff's disclosure of its E-Motion 360° Collection Trek Pack trade secret to Defendant, Defendant knew or had reason to know that such disclosure was intended to be in confidence. As a result, Defendant owed Plaintiff a duty of confidence with respect to Plaintiff's trade secret.
41. Under the circumstances of Plaintiff's disclosure of its E-Motion 360° Collection Trek Pack trade secret to Defendant, Plaintiff was reasonable in inferring that Defendant had consented to an obligation of confidentiality. As a result, Defendant owed Plaintiff a duty of confidence with respect to the E-Motion 360° Collection Trek Pack trade secret.
42. Subsequent to Plaintiff's disclosure of its E-Motion 360° Collection Trek Pack trade secret, Defendant used Plaintiff's trade secret as the basis of patent applications in the United States, Taiwan and China without Plaintiff's consent.
43. Defendant has commercially utilized Plaintiff's trade secret for Defendant's benefit without Plaintiff's consent.
44. Defendant has breached its duty of confidence and misappropriated Plaintiff's E-Motion 360° Collection Trek Pack trade secret.

45. Plaintiff has been, and continues to be, damaged by Defendant's theft/misappropriation of Plaintiff's E-Motion 360° Collection Trek Pack trade secret.
46. Because Defendant's actions were malicious, deliberate and made with full knowledge of, and total disregard for, Plaintiff's rights, punitive damages against Defendant are justified.

COUNT IV
(Constructive Trust)

47. Plaintiff restates, realleges and incorporates by reference paragraphs 1-46 as if fully set forth herein.
48. Defendant has knowingly, willfully, and unjustly appropriated, converted, possessed and used Plaintiff's intellectual property rights in the E-Motion 360° Collection Trek Pack invention.
49. By and through the filing of U.S. Patent Application No.09/593,301, and obtaining U.S. Patent No. 6,279,706, Taiwan Patent No. 180967 and China Patent No. ZL00209989.6, Defendant has sought to obtain and has obtained patent protection on Plaintiff's E-Motion 360° Collection Trek Pack invention.
50. Prior to the time of filing this Complaint, Plaintiff has contacted Defendant in an attempt to reach an equitable settlement of Defendant's unauthorized use of Plaintiff's E-Motion 360° Collection Trek Pack invention.
51. Defendant has rejected Plaintiff's attempts to reach an equitable settlement.
52. Plaintiff has no adequate remedy at law.
53. Based upon the foregoing, Defendant will continue to willfully, knowingly, and unjustly appropriate Plaintiff's E-Motion 360° Collection Trek Pack invention for

his own use and benefit, both in this country and abroad, unless this court imposes a constructive trust for the benefit of Plaintiff on said E-Motion 360° Collection Trek Pack invention and any patents (U.S. or foreign) issued thereon, and all proceeds derived therefrom by Defendant.

COUNT V
(Conversion)

54. Plaintiff restates, realleges and incorporates by reference paragraphs 1-53 as if fully set forth herein.
55. Defendant wrongly converted Plaintiff's intellectual property rights in Mr. Nykoluk's E-Motion 360° Collection Trek Pack invention into his own name.
56. Defendant has personally benefited from the above-said conversion of Plaintiff's rights in the E-Motion 360° Collection Trek Pack invention.
57. Plaintiff has been damaged by Defendant's wrongful conversion.
58. Because Defendant's actions were malicious, deliberate, and made with full knowledge of, and in total disregard for, the rights of Plaintiff, punitive damages against Defendant are justified.

COUNT VI
(Unjust Enrichment)

59. Plaintiff restates, realleges and incorporates by reference paragraphs 1-58 as if fully set forth herein.
60. Defendant has been unjustly enriched at the expense of Plaintiff by the unlawful use of Plaintiff's intellectual property rights in the E-Motion 360° Collection Trek Pack invention, including the above-described wrongful appropriation of

Plaintiff's rights in U.S. Patent No.6,279,706, Taiwan Patent No. 180967 and China Patent No. ZL00209989.6.

61. Because Defendant's actions were malicious, deliberate, and made with full knowledge of, and in total disregard for, the rights of Plaintiff, punitive damages against Defendant are justified.

COUNT VII
(Common Law Unfair Competition)

62. Plaintiff restates, realleges and incorporates by reference paragraphs 1-61 as if fully set forth herein.
63. Defendant's actions as specified above, including but not limited to his breach of confidence and misappropriation of trade secret, conversion of Plaintiff's intellectual property rights and unjust enrichment at the expense of Plaintiff, constitute unfair competition with Plaintiff by reason of Defendant's use of the Plaintiff's E-Motion 360° Collection Trek Pack invention.
64. Defendant's acts of unfair competition have caused and are continuing to cause irreparable harm to Plaintiff and unless Defendant's use of Plaintiff's invention is restrained, Defendant will continue its tortious acts to Plaintiff's detriment.

PRAYER FOR RELIEF


WHEREFORE, TRG Accessories, LLC, respectfully demands judgment in its favor and against Defendant Mao and prays for:

- a. correction of the '706 patent to reflect that Defendant Mao is not the inventor of the E-Motion 360° Collection Trek Pack;
- b. correction of the '706 patent to reflect that Cory Nykoluk is the inventor of the E-Motion 360° Collection Trek Pack;

- c. such damages as Plaintiff has sustained as a result of Defendant's breach of confidence and misappropriation of Plaintiff's trade secret;
- d. a constructive trust for the benefit of Plaintiff on U.S. Patent No. 6,279,706, Taiwan Patent No. 180967 and China Patent No. ZL00209989.6;
- e. such damages as Plaintiff has sustained as a result of Defendant's conversion of Plaintiff's intellectual property rights in the E-Motion 360° Collection Trek Pack invention;
- f. such damages as Plaintiff has sustained as a result of Defendant's unjust enrichment at the expense of Plaintiff;
- g. such damages as Plaintiff has sustained as a result of Defendant's unfair competition;
- h. for an injunction prohibiting Defendant from manufacturing the E-Motion 360° Collection Trek Pack invention for his own use;
- i. for an injunction prohibiting the Defendant from importing into the United States any E-Motion 360° Collection Trek Packs not for the benefit of Plaintiff;
- j. for punitive damages in an amount to be determined by the jury;
- k. for prejudgment and postjudgment interest;
- l. for assessment of costs against Defendant;
- m. for reasonable attorneys' fees; and
- n. for such other relief as this Court may deem just and proper.

Respectfully submitted,

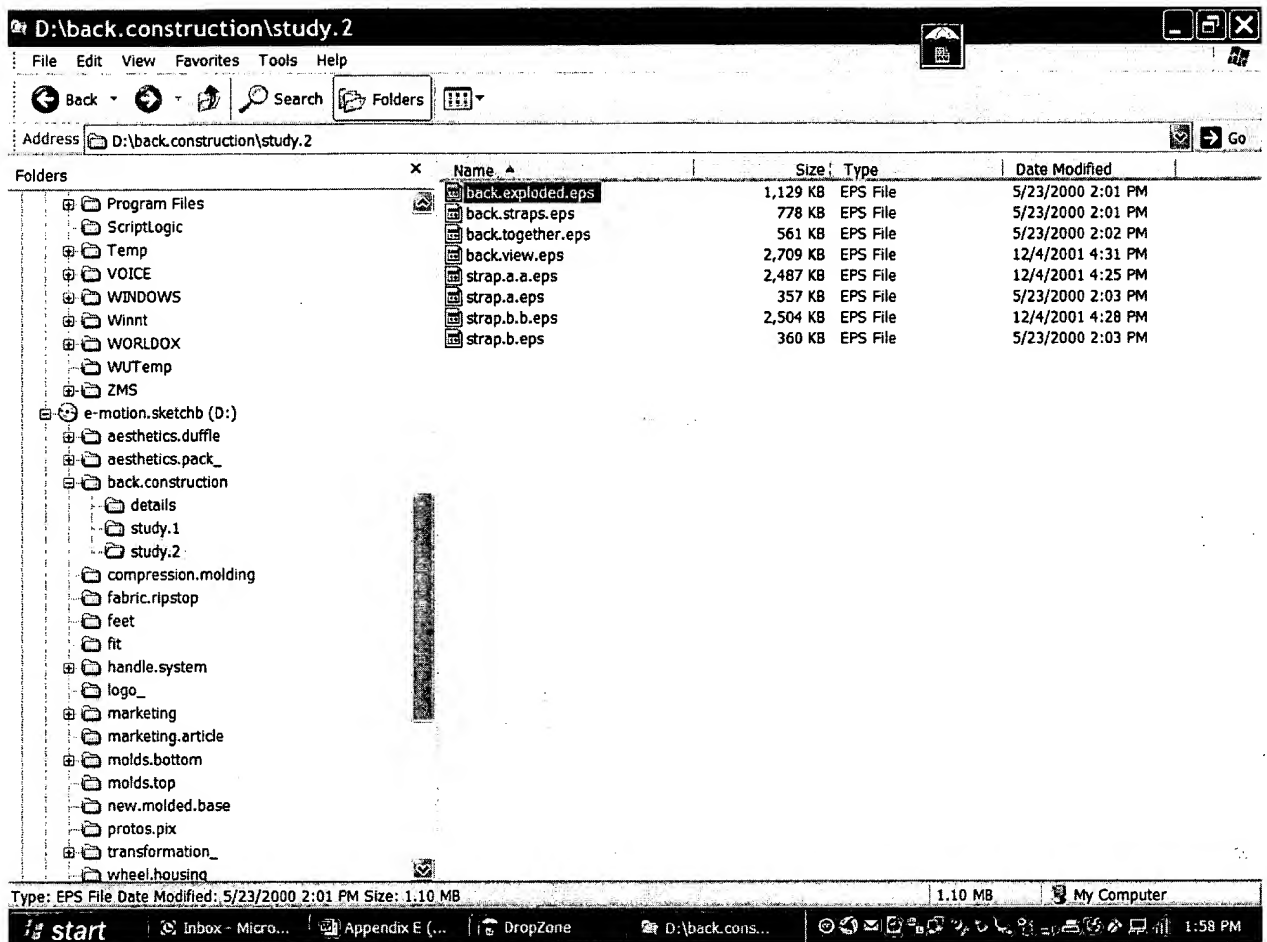
LEWIS, RICE & FINGERSH, L.C.

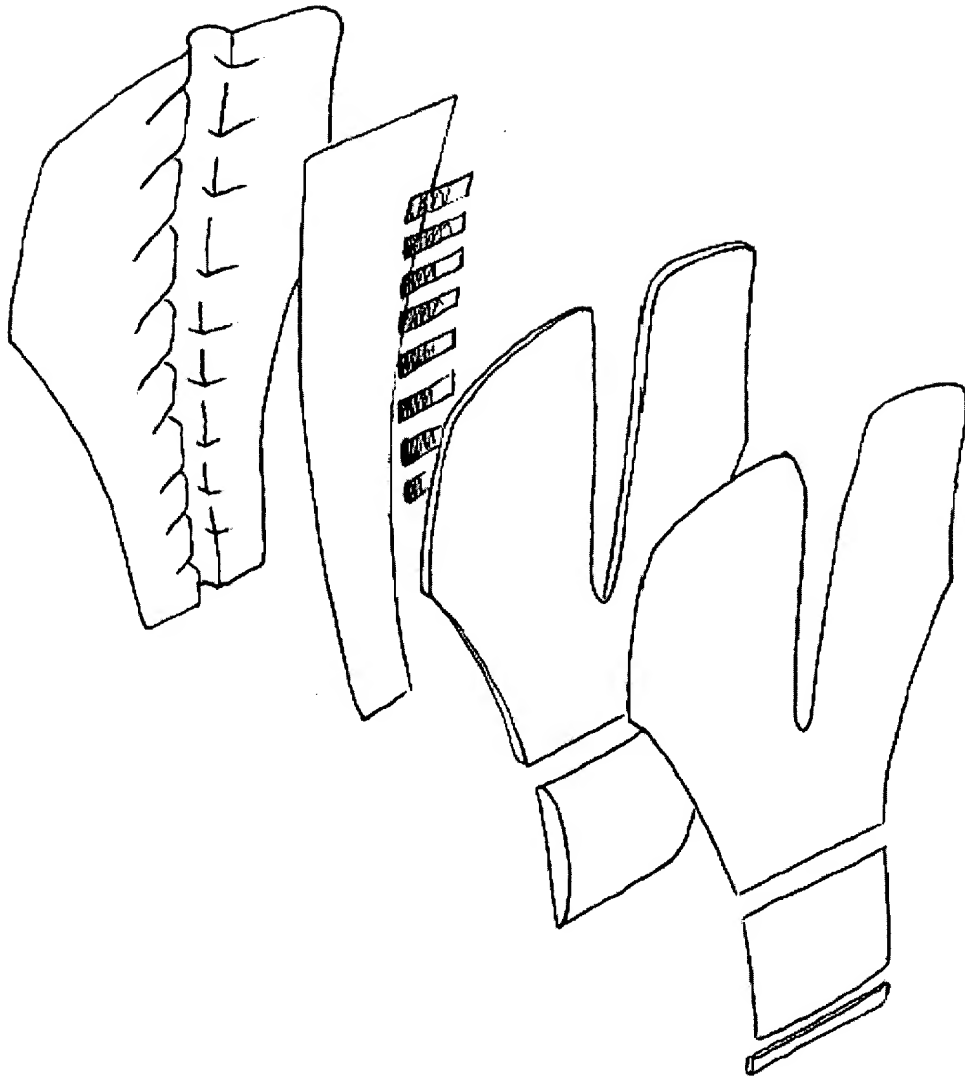
By: 
Frank B. Janoski #3480
John W. Vandervoort #114125

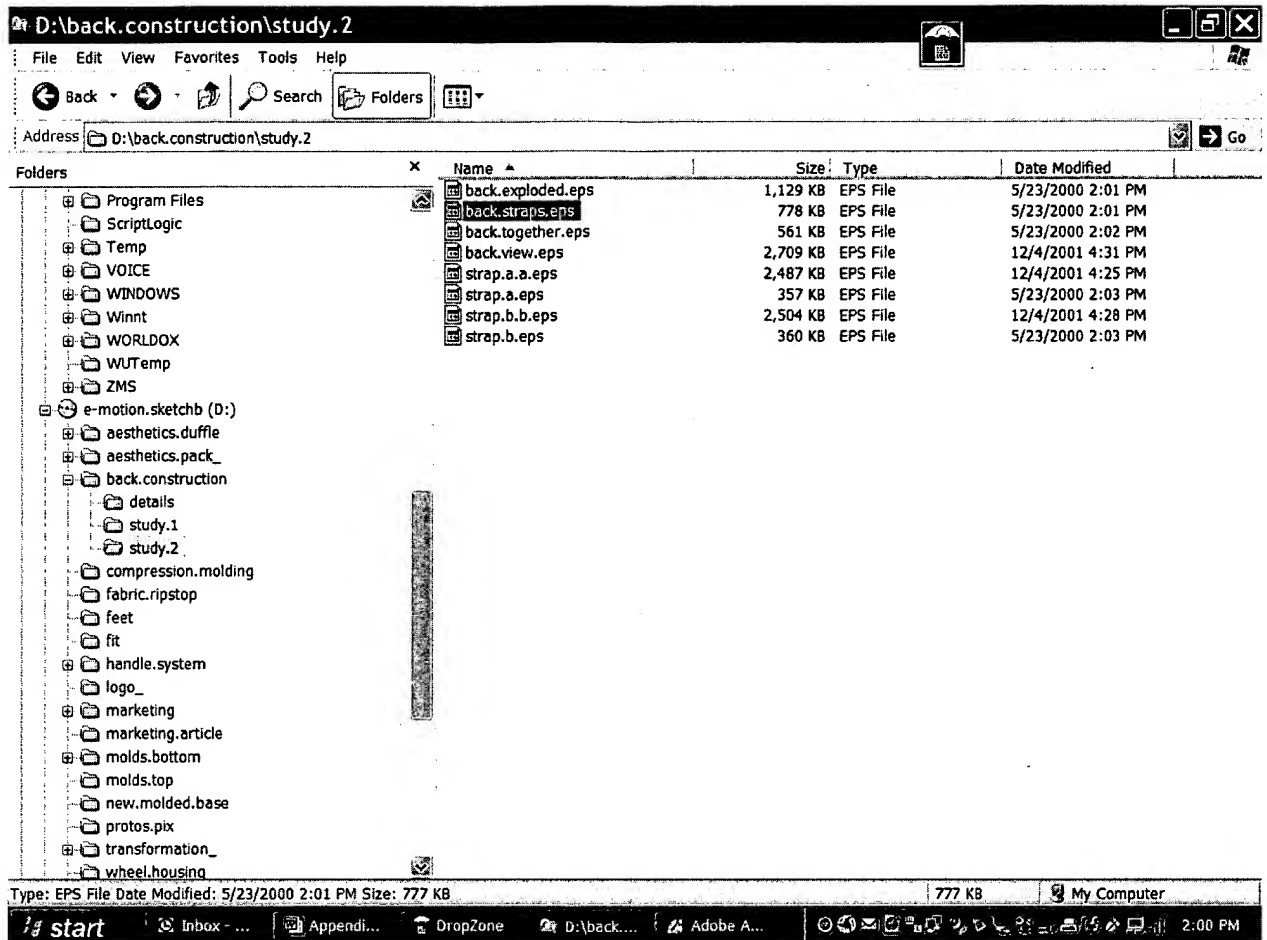
500 N. Broadway, Suite 2000
St. Louis, MO 63102-2147
Telephone: (314) 444-7600
Fax: (314) 241-6056

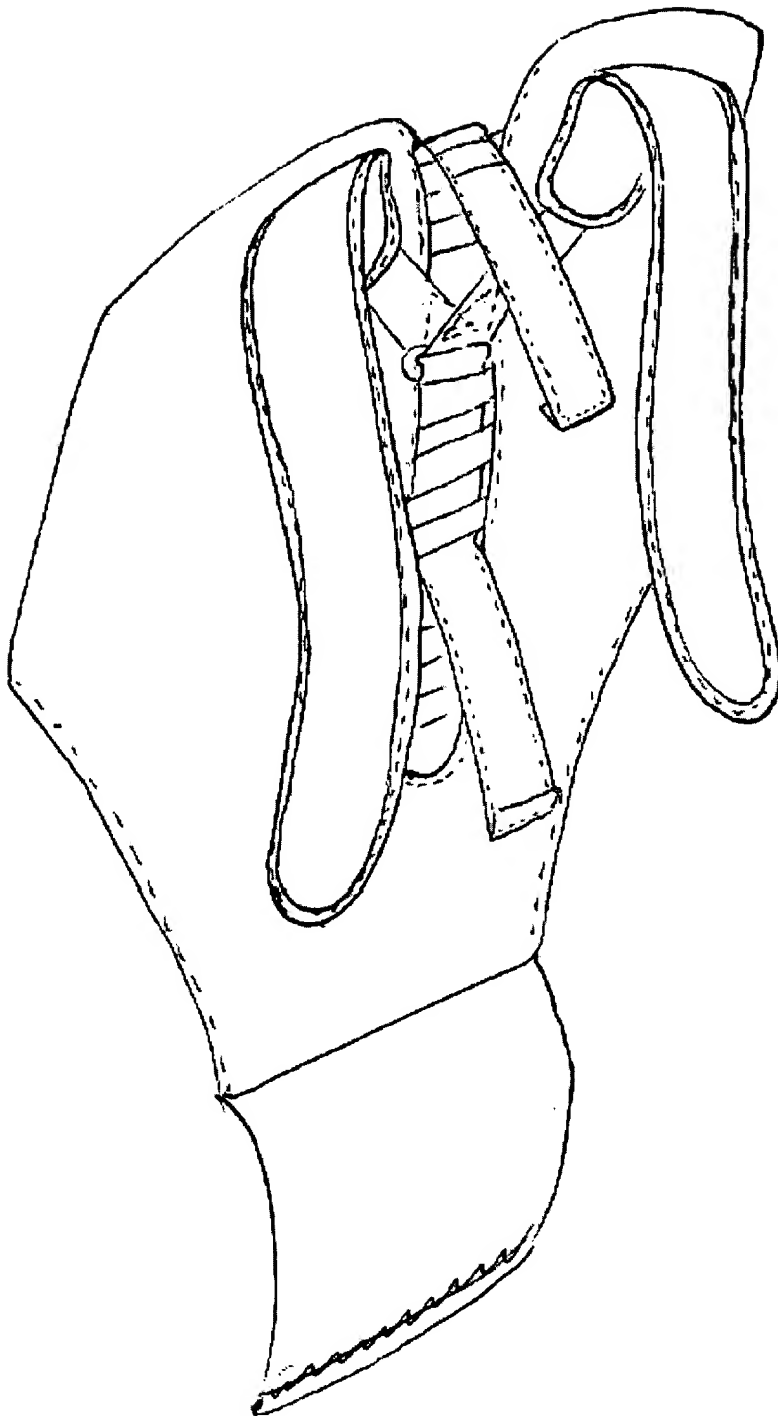
Attorneys for Plaintiff
TRG Accessories, Inc.

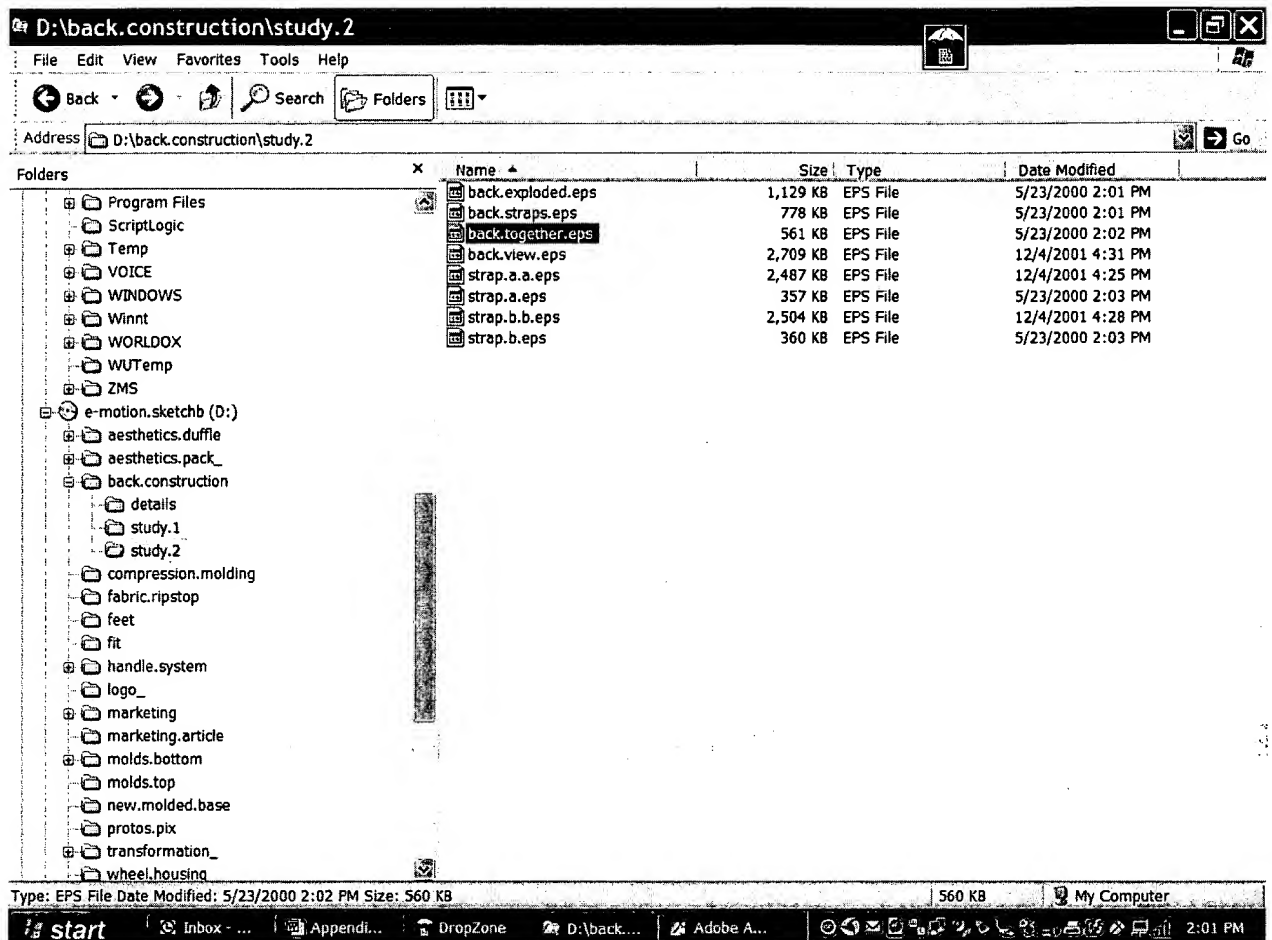
APPENDIX E

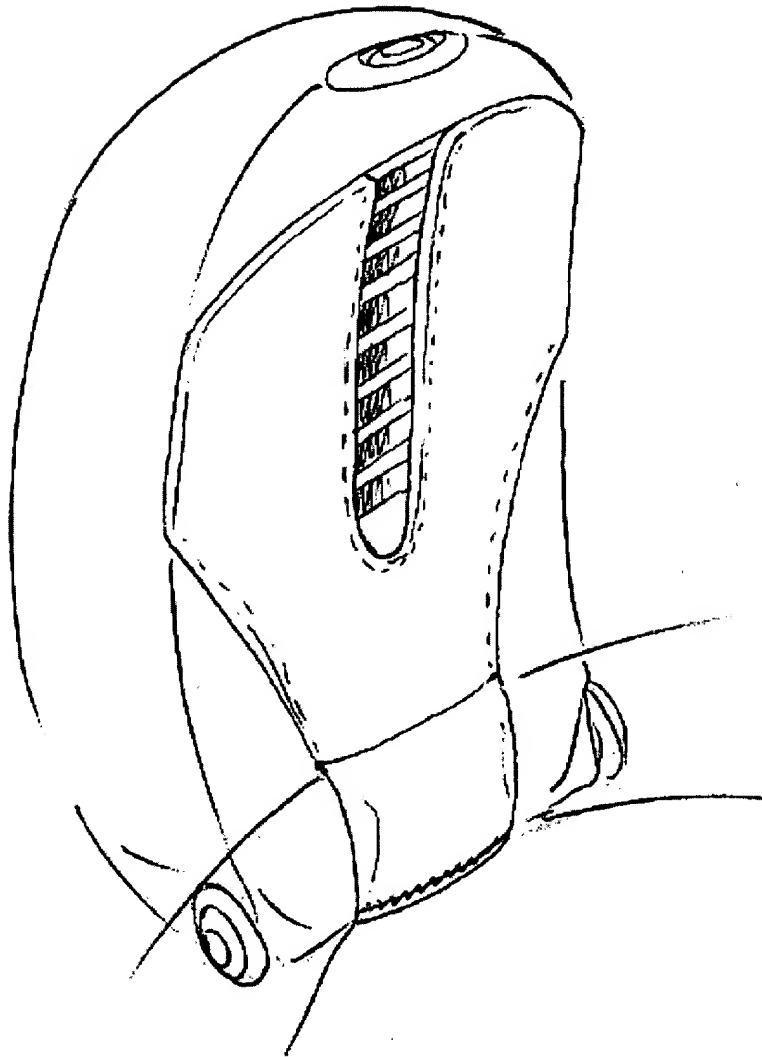


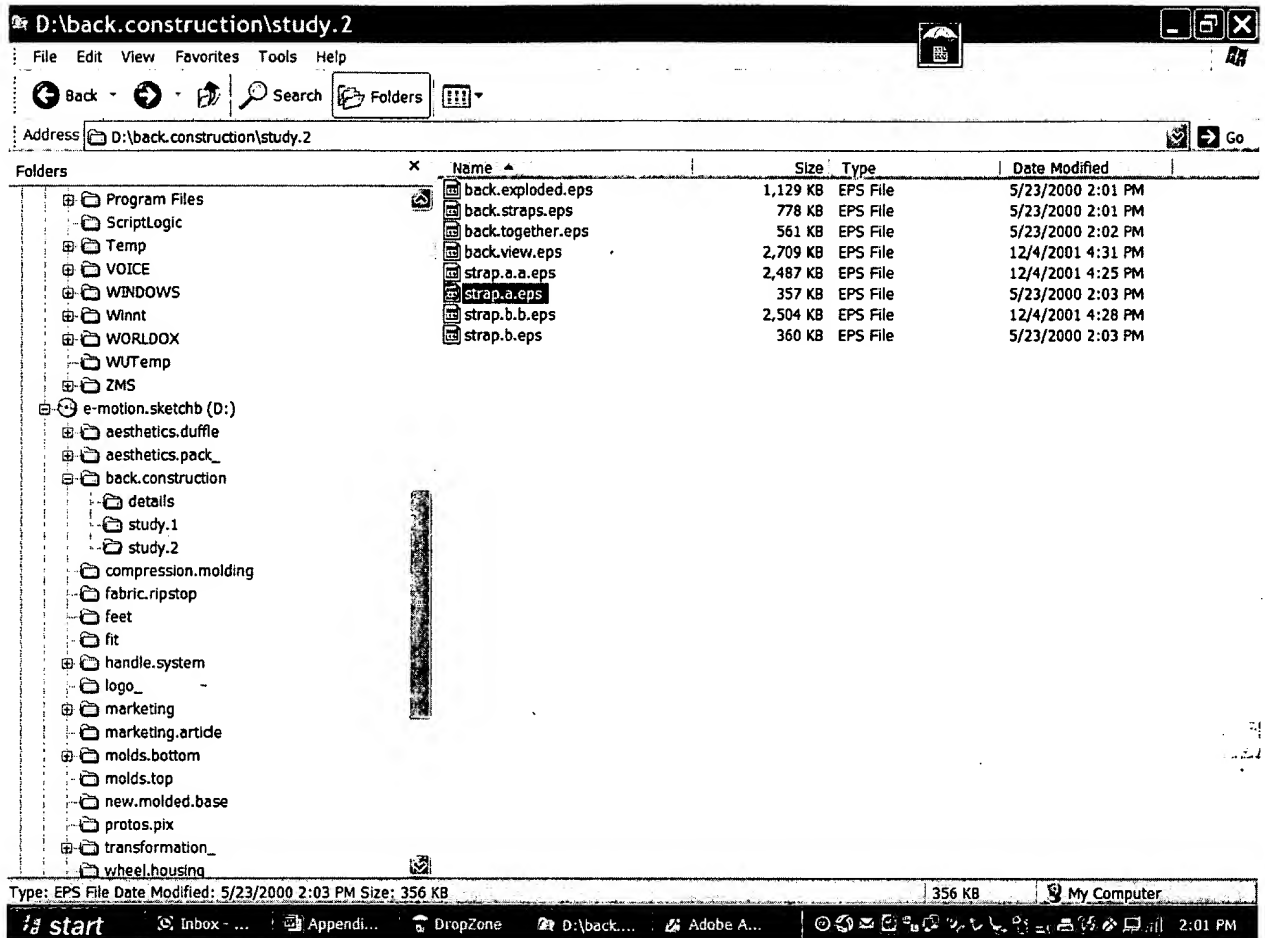


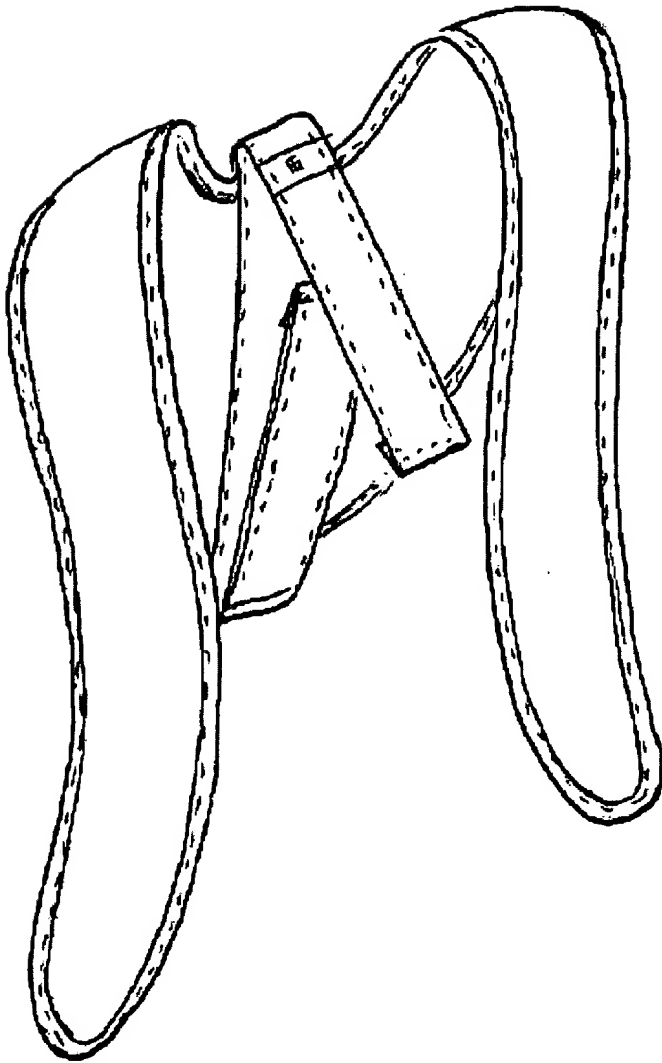


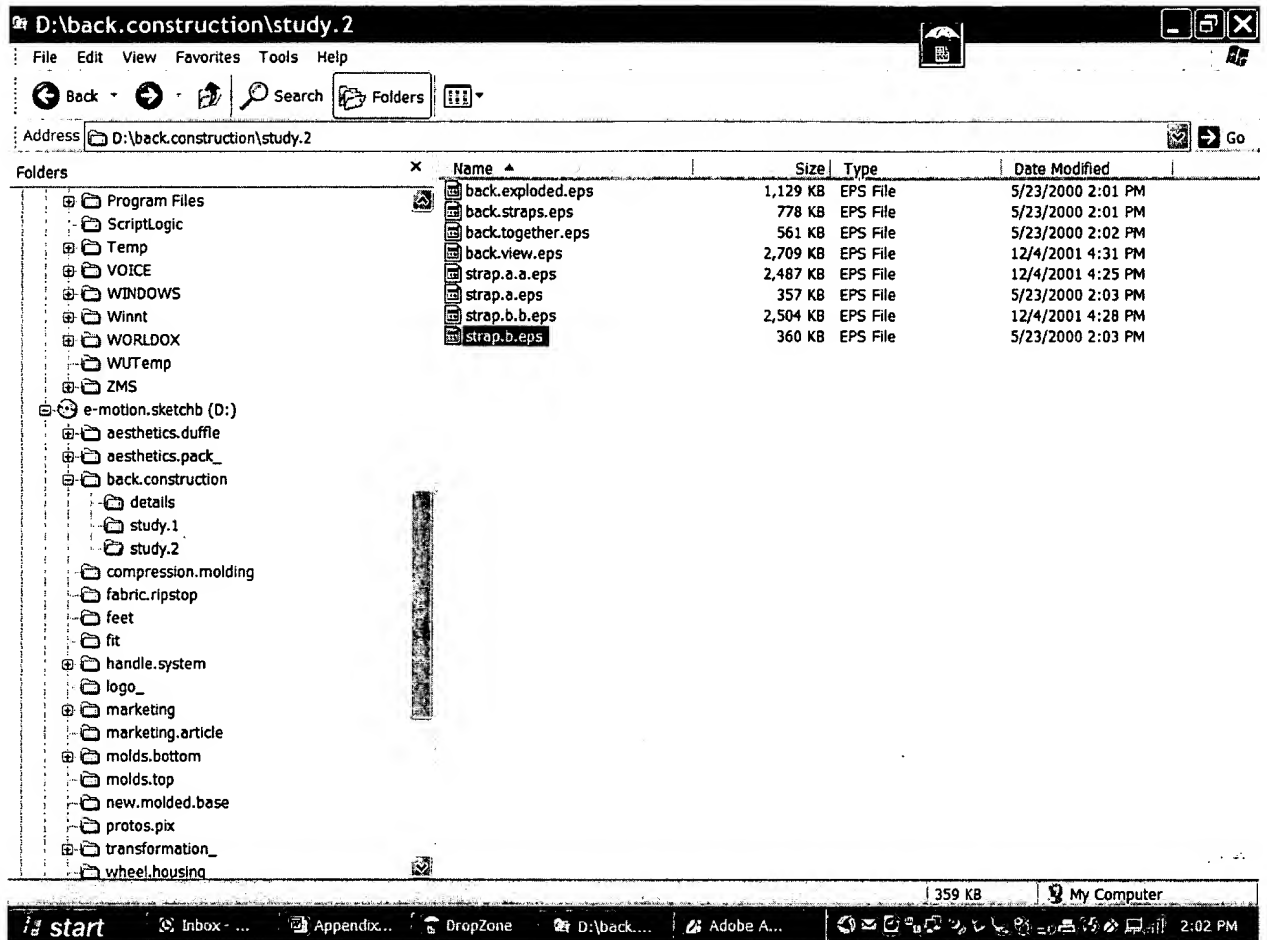


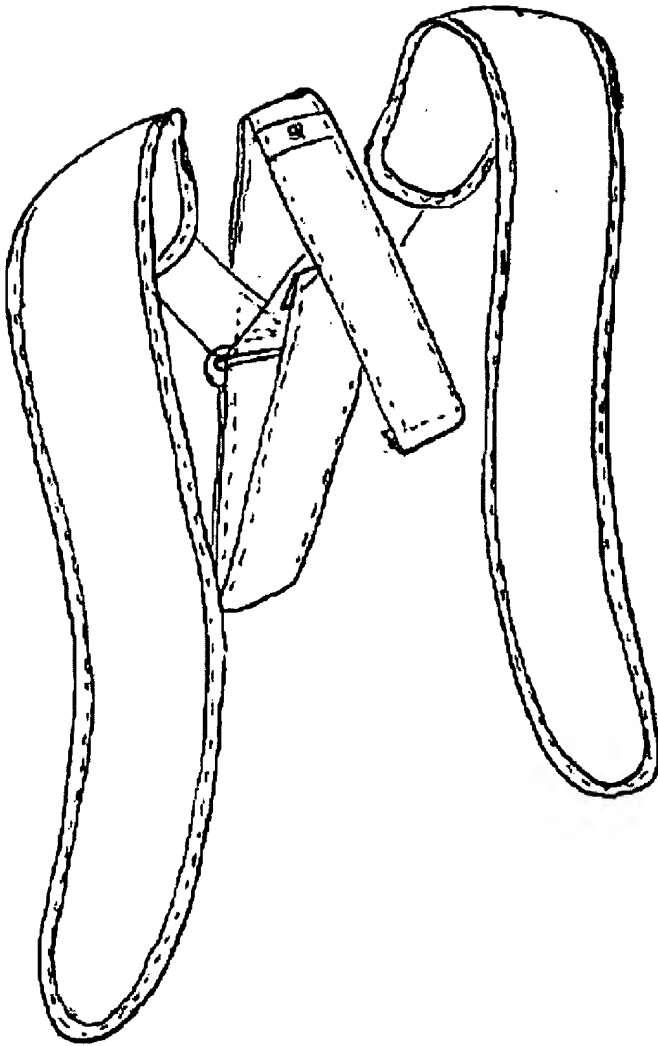




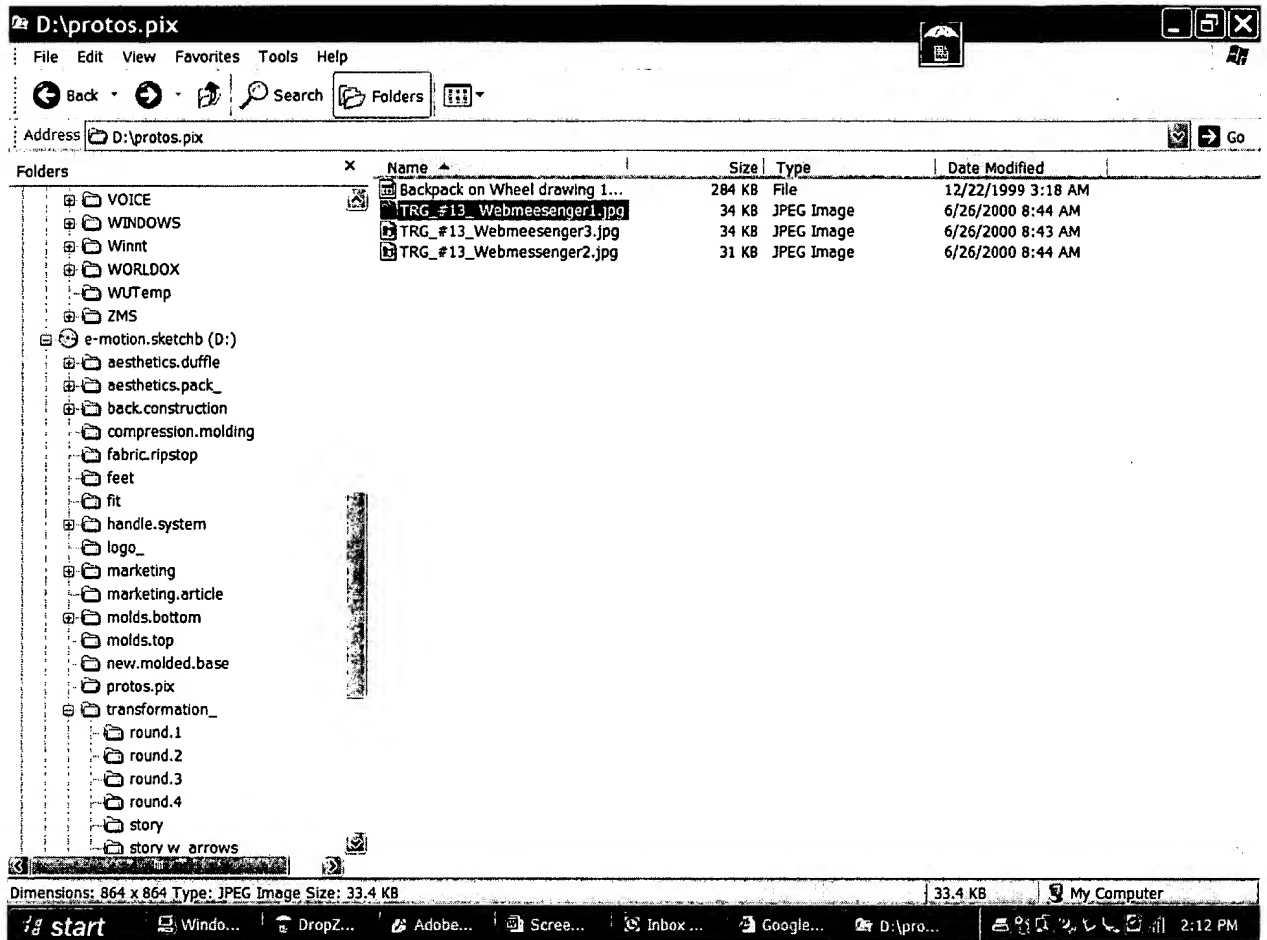




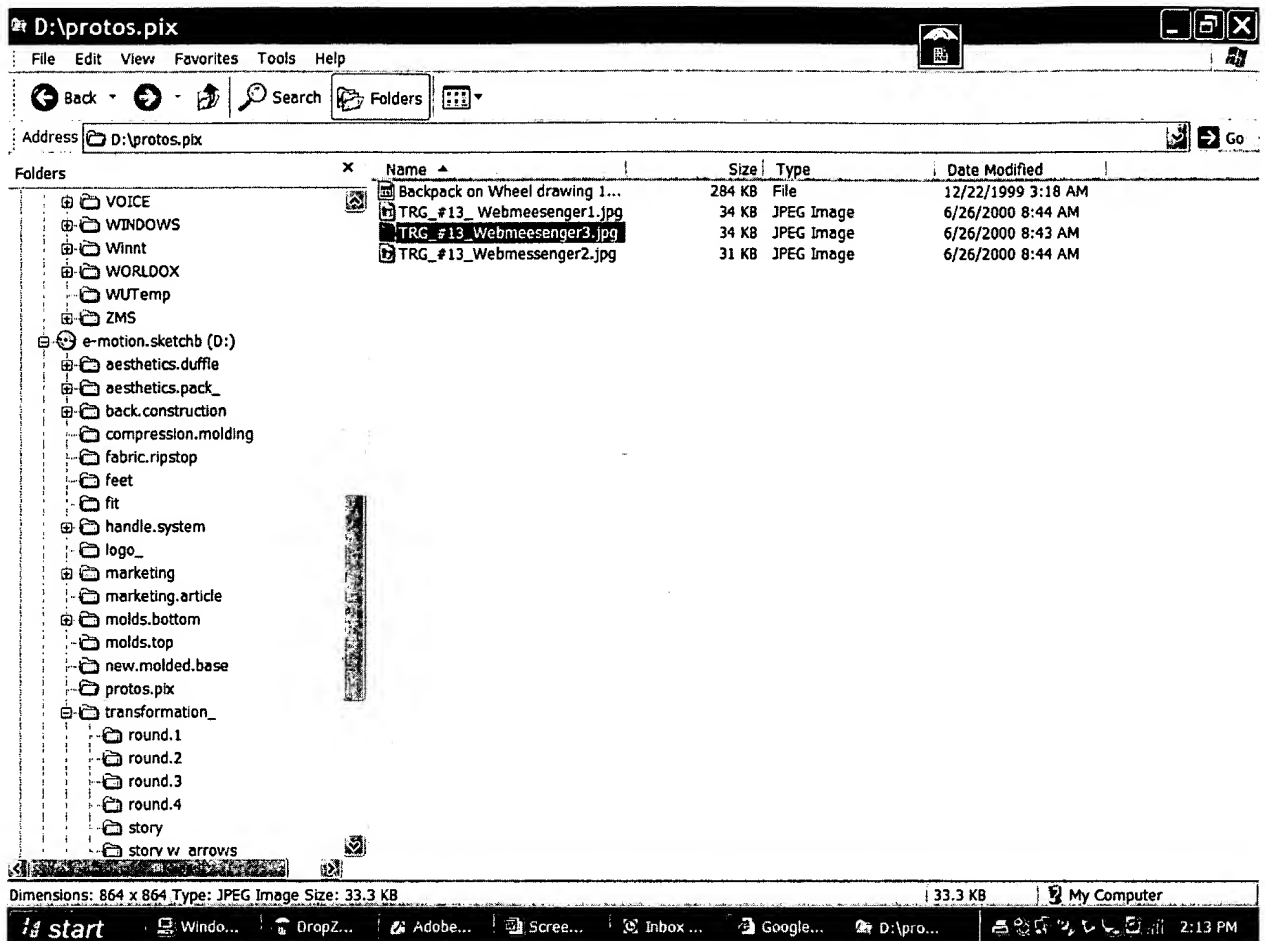


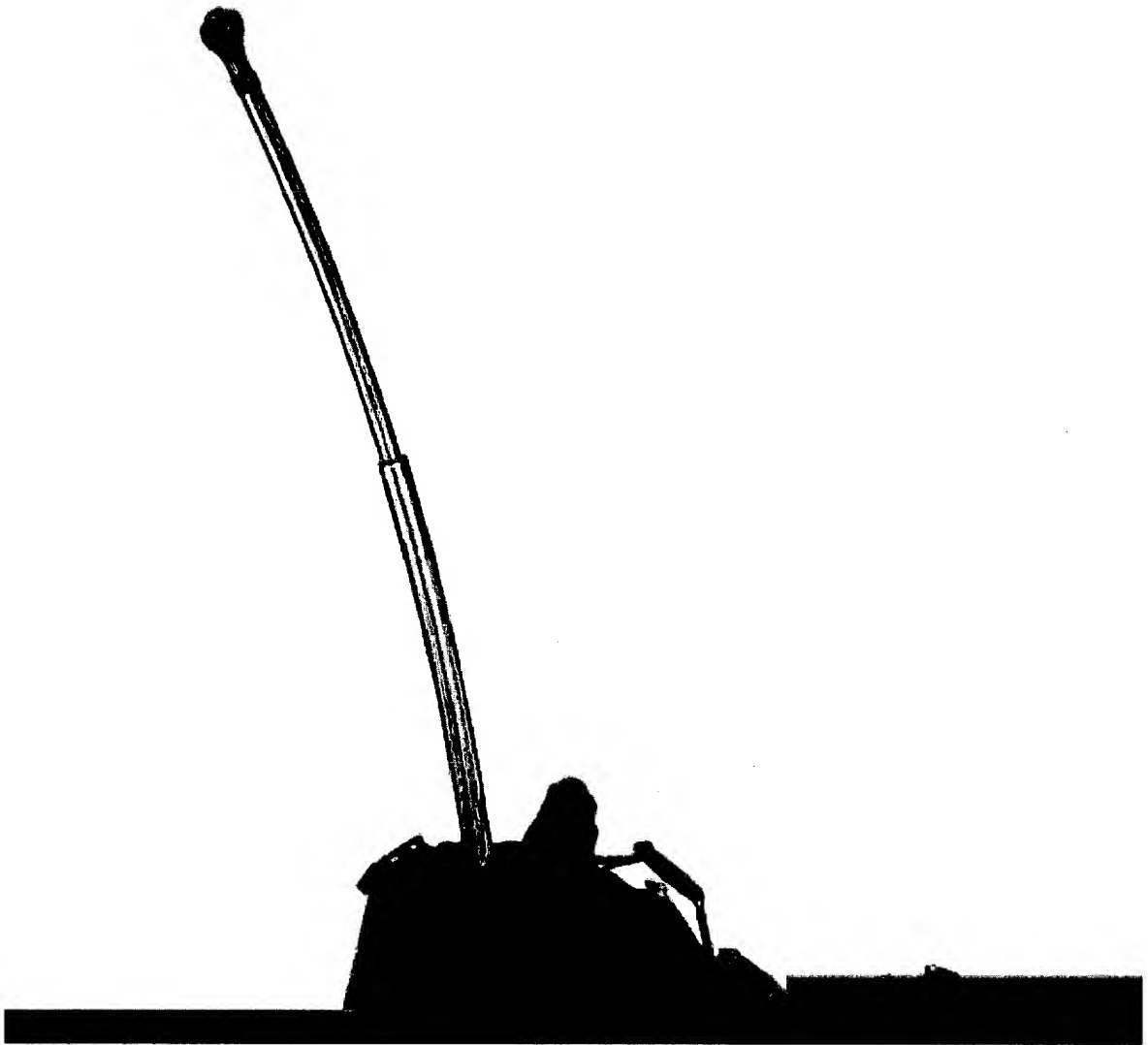


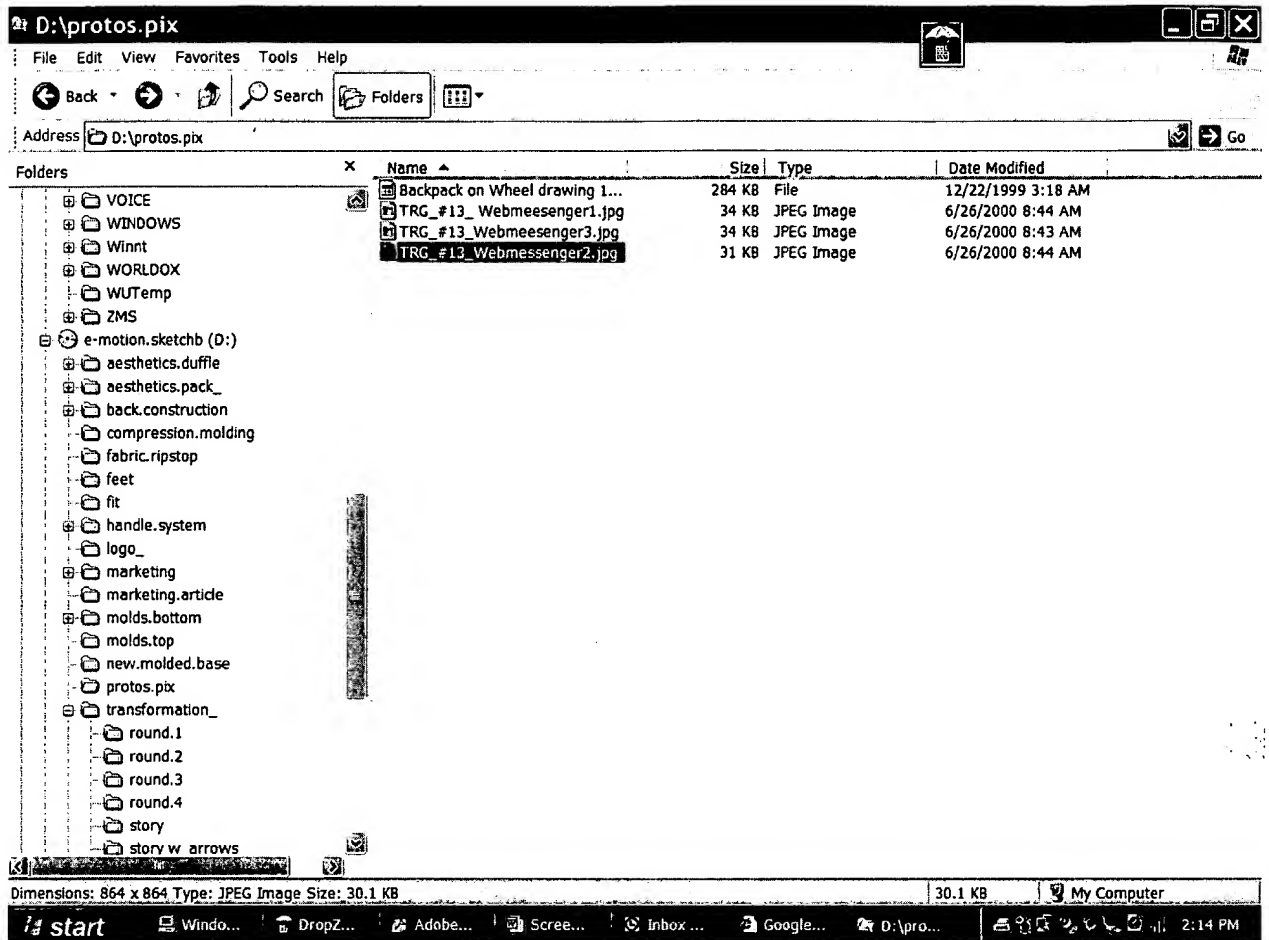
APPENDIX F













APPENDIX G

Project Timeline - Swiss Army Field Gear - Wheeled Back Pack

File:
BPow

Week of...	Design Work In Process...
03, Apr 2000	finish 2nd eva top mold, finalize collection silhouettes
10, Apr 2000	start 2nd prototypes, answer questions
17, Apr 2000	finish 2nd prototype
24, Apr 2000	Trip to NZ, review designs
01, May 2000	start 3rd eva prototype molds
08, May 2000	complete 3rd prototype molds
15, May 2000	start 3rd handmade models
22, May 2000	finish 3rd handmade models, start 3rd prototypes
29, May 2000	finish 3rd prototypes
05, Jun 2000	ship 3rd models to TRG
12, Jun 2000	prototype review, start final frame drawings
19, Jun 2000	confirm final drawings, open production molds
26, Jun 2000	molds in process
03, Jul 2000	molds in process, start final samples
10, Jul 2000	molds in process, final samples in process
17, Jul 2000	production molds completed, final sample in process-begin testing handle
24, Jul 2000	final samples in construction-test entire piece
31, Jul 2000	final OR samples in completion stage-tcomplete testing of entire piece
07, Aug 2000	21 samples received for OR show (7 each of 3 color ways)
07, Aug 2000	Production begins on or before

Prepared by: David Mittleman
c:\jovialphoenix\bpowtimeline041000

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